IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	CR-23-0203-AP
vs.	)	No. CR201502140
	)	
JULIO SALAZAR,	)	
	)	
Defendant.	)	

_____

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Jury Trial - Day 24

Florence, Arizona
July 21, 2023
9:16 a.m.

BEFORE: The Honorable Robert Carter Olson
Judge of the Superior Court

REPORTED BY:
JUDY E. GRIFFIN, CSR
Certified Reporter
Certificate No. 50813

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THE COURT: Okay. We are back on Day 24. This is CR201502140, State versus Salazar. The Court notes the presence of Mr. Salazar in civilian attire, no visible restraints, being assisted by his counsel, Mr. Tallan and Mr. Wilikison, and for the State, Deputy County Attorneys Goddard and Johnson.

Just a couple of technical issues. We apparently have a new bulb in the projector but apparently IT disconnected the HDMI port from the state's table. I think they thought that maybe was part of the problem, but I believe you are just running off of the cable from the ELMO; is that right?

MR. GODDARD: Yes.

MR. JOHNSON: So the HDMI cord from our table has not worked for months. Maybe it's been fixed in the meantime, but the last trial we did in here the HDMI port for the state's table did not work. So we've just been running it through the lecturn.

THE COURT: That explains why you have been using that.

MR. GODDARD: Yes.

THE COURT: Okay. The bottom line is you just need to continue doing that because the HDMI port is out.

MR. GODDARD: Yes.

THE COURT: Okay. A few other housekeeping matters. My judicial assistant did receive -- report that she received emails from both the state and defense that the draft of the final jury instructions are approved without edits.

Mr. Tallan, is that correct?

MR. TALLAN: Yes, Your Honor. But as I was driving in this morning, I was thinking that we took the -- I believe we had them turn in their prior final instructions.

There are some things in those final instructions that still -- from the prior phase still apply to this phase. For example, definition of evidence, credibility -- the instruction on credibility of evidence.

So maybe we want to just remind them that the instructions that were given before regarding witnesses and credibility still apply. I should have requested those be added into the final instructions, but that was my failure.

THE COURT: I guess I don't have a problem doing that. My concern, of course, is that the final jury instructions talk about there's going to be a different phase of trial and different rules apply.

MR. GODDARD: Well, and also that you need to disregard other instructions that contravene. So I --

that's not in the RAJIs. I wouldn't -- I would object to non-RAJI material being instructed to the jury.

THE COURT: Again, there are no RAJIs for the final jury instructions.

MR. GODDARD: No. But whether or not or to include other instructions, what instructions. Because credibility, I mean, that's in the final instructions for penalty phase, how to assess --

MR. TALLAN: I didn't remember whether they were in there.

MR. GODDARD: And I know that was just an example. But, I mean, all I'm saying, we would need to craft out a response, not just make this up on the fly because it's not -- there is no RAJI that describes this.

MR. TALLAN: Do we have a copy of the final instructions?

THE COURT: I have those for you.

Mr. Tallan, if you could take the copy for the state as well. Two copies for each.

MR. GODDARD: So, I guess, Judge, my recommendation would be we leave the instructions as contemplated. If a question comes up that can be answered by another instruction then we can deal with it. But for now would just -- my recommendation is to just leave the RAJIs the way they were designed by the Supreme Court.

MR. TALLAN: The instruction on credibility is referred to. So --

THE COURT: I mean --

MR. TALLAN: -- I guess we can leave it as it is. And if they have a question, we can always refer them back to an instruction they were given before, if it applies.

THE COURT: I mean, just to be clear, in the grand scheme of things if this is a concern, we can -- if there's some instruction from the last phase of trial that we should insert in this, I mean, it wouldn't take long to do that. I mean, I guess the question is, I guess I'm asking the magnitude of your concern.

MR. TALLAN: I was concerned about credibility but that's in here.

THE COURT: Okay. Then let's just -- if we get questions then is it acceptable we'll just, as Mr. Goddard suggested, we'll just keep our eyes open for that. And if it appears that that would be helpful to provide with the answers, then we'll provide it at that time.

MR. TALLAN: Yes, Your Honor.

THE COURT: And, Mr. Goddard, that's acceptable to you as well?

MR. GODDARD: Yes.

MR. TALLAN: Then, Your Honor, I have two exhibits, Exhibit 395 and 396. 395 is Dr. Hyde's report.

396 is Dr. Abram's report.

Mr. Goddard and I went back and forth. We redacted. There was nothing we felt needed to be redacted from Dr. Hyde. There were some redactions from Dr. Abrams' report where Dr. Abrams had his legal hat on, made some legal comments. So we redacted those. I would move to admit these as evidence.

THE COURT: Mr. Goddard, any objection?

MR. GODDARD: No.

THE COURT: 395 and 396 admitted without objection.

(Exhibits 395 and 396 admitted into evidence.)

THE COURT: Mr. Tallan, while you are up here, can I impose on you again. Here are the verdict forms, two for each table.

It appears that this is the standard form of the verdict forms. Any concerns with the verdict form?

Mr. Tallan, when you're ready.

MR. TALLAN: No, Your Honor. That's fine.

MR. GODDARD: No, Your Honor.

THE COURT: Very well. I note for the record that we have family members who are present in the courtroom. This is an open courtroom. All are welcome to be here. I know that there have been -- there has been nothing but good and appropriate behavior by all who have

witnessed this trial.

Just as a note, that we are on the final day and today is going to be a little different than the prior days. Just, respectfully, please know that there is not to be any outbursts, any comments, any clapping, any show of any kind of conduct that would draw the attention of the jury; and that if anything like that were to happen, a person could be held in contempt. They could also be required to leave the courtroom.

So, again, I mean this respectfully. I know that everybody has behaved appropriately throughout this whole trial. Just, again, this is a little different today.

Again, if Mr. Salazar chooses to speak, just know there's not to be any exhibition related to that.

Mr. Tallan, any record or anything you would like to add to that?

MR. TALLAN: No, Your Honor.

THE COURT: Mr. Goddard?

MR. GODDARD: No, Your Honor.

THE COURT: Okay. Mr. Salazar, just to address you for a moment. Without disclosing anything about your communications with your attorney -- with your attorneys, when we talked a couple days ago, we talked about your right to make a statement to the jury. You are not required to. It won't be held against you if you don't, but you have a

right to do so.

Have you had a full, adequate and sufficient opportunity to meet with your attorneys, talk with your attorneys, and get all of your questions answered about this decision and about what you might say by consulting with your attorneys?

THE DEFENDANT: Yes.

THE COURT: Mr. Tallan, any additional record you would ask to be made?

MR. TALLAN: Yes. Mr. Salazar will be doing an allocution. We have shown the allocution to the state. They have said they have no objection. They have stated that they -- there's nothing in here that they feel would be improper or would be grounds to reopen the state's case.

THE COURT: Mr. Goddard?

MR. GODDARD: Yeah. That's correct, Judge.

There are portions that get close. Because of that, based on prior experience, I do have a witness ready to go if it comes to that. Don't think it will, but we have been in this situation before.

So, anyway, that accurately states my position.

THE COURT: Very well.

MR. GODDARD: What Mr. Tallan said.

THE COURT: Then, Mr. Salazar, just again. Part of my responsibility is to make a record of what has

happened here. So I will just formally ask you the question: Have you made a decision whether you wish to make a statement to the jury?

THE DEFENDANT: Yes.

THE COURT: And what is your decision?

THE DEFENDANT: Yes, I will be doing that. Yes, I will be making a statement to the jury, and I understand.

THE COURT: Okay.

THE DEFENDANT: We just want clarity with the state that everything I said is approved.

THE COURT: Again, just to be clear, the state's not controlling --

THE DEFENDANT: Yes.

MR. TALLAN: -- what you say.

THE DEFENDANT: Yes.

THE COURT: It's just that depending on what you say, the state might request to have an opportunity to go further. But just to be clear, nobody is -- let me say it more specifically. The Court is not putting a limit on you right now as to what you say. Understood?

THE DEFENDANT: Understood.

THE COURT: All right. Anything else as to that matter, Mr. Tallan?

MR. TALLAN: No, Your Honor.

THE COURT: Anything else, Mr. Goddard?

MR. GODDARD: No, Your Honor.

THE COURT: All right. I think that's everything that I had.

Mr. Goddard, Mr. Johnson, anything else to cover before we begin?

MR. GODDARD: I will just put on the record that victims rights have been complied with today. That's it.

THE COURT: Mr. Tallan, Mr. Wilikison, anything else to put on the record?

MR. TALLAN: No, Your Honor.

MR. WILKISON: Judge, Mr. Salazar did have a question. Is he going to be standing at the podium when he reads it to the jury?

THE COURT: Yes. Is there -- I guess my intention would be for the ELMO to be moved kind of out of the way a little bit and to bring the podium back a few feet.

Do the officers have any concern about that?

DETENTION: Whatever you want.

THE COURT: Okay. So, Polo, can we just kind of move the ELMO out of the way a little bit and just set up the podium so it's directly facing the jury just back a few feet.

THE REPORTER: Judge, can I mention one thing to you?

(Off-the-record discussion.)

THE COURT: The court reporter reminded me that sometimes when a person reads from a document, they read fast. All right. The point is this is not a race. This is not a rush. Older ears sometimes take more time to sort out words and that sort of thing.

So just know speak at a deliberate pace. But, again, nobody's got a clock on you. Just take the time that you need so that the jury can clearly understand you as you speak. Understood?

THE DEFENDANT: Yes. Understood.

THE COURT: Are we ready for the jury, Mr. Tallan?

MR. TALLAN: Yes, Your Honor.

THE COURT: And Mr. Goddard?

MR. GODDARD: Yes, Your Honor.

THE COURT: Polo, we have all 16?

THE BAILIFF: Yes.

THE COURT: So, folks, when the jury gets in here I'm just going to provide them a brief summary of what the schedule is today, and then we'll be starting with Mr. Salazar. Then from there going on to the final jury instructions.

Mr. Tallan, are you going to need any time to set up anything before you start your closing?

MR. TALLAN: No, I just need to plug in my computer to the ELMO. I believe I rested in front of the jury on Wednesday.

THE COURT: You did. That's my memory.

MR. GODDARD: Yeah.

THE COURT: The keeper of the record agrees.

(The following proceedings took place in the presence of the jury.)

THE COURT: Okay. We are back on Day 24, CR201502140. Parties, all counsel, all jurors are present.

Good morning, everyone. Sorry to keep you waiting a little bit. We did have some final matters to address, as well as printing final jury instructions. That took us a little time but we are ready to begin.

Just to give you a brief overview of today that you may remember when we were last here on Wednesday, the parties rested so that the evidence has been introduced. There's been a couple more exhibits that have been admitted.

Again, the attorneys have been working hard to streamline and work together on the admission of exhibits. So that's been done, but here is where we stand today.

Mr. Salazar has a right to address the jury. It's not an obligation. It's a right, and he is going to exercise that right. So we're going to start with Mr. Salazar speaking directly to the jury.

Next we will -- I will be reading you the final jury instructions. At that time, as always, I'll collect the preliminary instructions from you and replace them with the final instructions. We'll go through them.

Then as in the other steps of this phase, since there's a burden on the defense, the defense goes first and last. So the defense will have the opportunity to make the first closing argument and then the state will do so and then defense will have an opportunity to speak to you last. Then we will begin the final process of starting you on your deliberations.

So with that, let us get started.

And, Mr. Salazar, if you would please come up to the podium. When you are ready, please begin. If anybody has any difficulty hearing Mr. Salazar, please let me know.

THE DEFENDANT: To the jury, I would like to thank you for listening to me today.

THE COURT: Mr. Salazar, I'm sorry to interrupt you. I think you need to get that microphone a little closer to you or point it at you. That's better.

THE DEFENDANT: To the jury, I would like to thank you for listening to me today and for considering all the evidence presented.

By now you have heard about my life and the things I have done that have led me here today. I, myself,

can't believe it is me being talked about and I deeply regret all the bad things that I have done. I live every day haunted by it all.

Please know that there is no point in my life that I wanted to spend the rest -- spend my life in prison. I don't know of anyone who would want a life like this, the place where I am today, coming from years of struggling, traumas, and many very bad decisions on my part.

I feel no one except for me can really express what you have heard has impacted me and is the reason why I am before you today with the very real possibility of being sentenced to death.

Given that my life is in your hands, I feel that it is important that I share with you how I got here. I learned from a young age that my mother was beaten by my father when she was pregnant with me.

After my mom escaped from my father and fled with us kids to the United States, she lived in fear for many years that my father might kill her and take us.

She blamed the loss of my twin on my father's beatings and she thought this was also why I had so many problems growing up.

I know she carried a lot of weight on her shoulders and was always worried. She blamed herself for the incident in which I was hit by a car as a baby. She

always felt -- she always felt my head injuries caused my behavior and mental health problems as I got older.

I was told when I was very young that I was damaged. My face -- my facial scars, disfigurement, and comments from people were constant reminders of that.

My uncles would make fun of me of my face in front of me as though I wasn't there, and I would pretend that what they were saying didn't bother me, but it did.

From my earliest memories I have always felt as though I had to struggle just to survive. I was born into a family where there was always tension, conflict, and a lot of fighting especially between my older brothers.

We lived in the projects in Central Phoenix for much of my childhood and we moved around quite a bit. The places where we lived were very crowded, usually two-bedroom apartments with my parents, all of us seven kids and extended family off and on.

My mother loved me and siblings very much. There was no doubt she tried to do her best for us. She and my stepfather never learned English. So they felt most comfortable living in areas where there were other Hispanic people. She and my stepfather worked very hard, long hours every day, to provide for our family. Despite their hard work, we constantly struggled and barely got by.

Since they were very much -- since they were away

much of the time, we were left alone with older siblings babysitting us. There was also times when some uncles or other extended family lived with us. So whoever was the oldest in the house at any given time was the babysitter for us younger kids.

People were in and out so things in my house were always changing. My brothers, grandfather, and uncles were involved in some bad stuff, and they were in and out of jail.

We didn't really have any routines or structure that I could remember. I don't remember much a connection to my family. And, for me, the few happy memories were drowned out by the hard times. I remember always being hit for something by someone in my home especially my uncles and older brother Martin. Martin was especially brutal to me.

In looking back now, I understand that he was just preparing me for what was to come. I started to see things happen around me, things like cars being stolen, burglaries, drugs, assaults happened just about every day. There was always the sound of gunshots usually at night.

Snitching in our neighborhood was something you don't do. Anyone that snitched to the cops faced consequences, and because of this we learned to look away and shut up when things happened.

I never realized how bad things really were until

my Uncle Ramon was killed. I have a blurry, dark memory of waking up to the sound of gunshots outside. My family and I ran outside and found my uncle lying in a pool of blood. He had just been shot and everyone was screaming.

I remember sitting on the concrete just staring at all the blood and my uncle's body hoping he would wake up, but he never did. He was buried a few days later on my eighth birthday.

I grew to dread being at home and started hanging out in the neighborhood more and more. I realize now that I was exposed to things no child or even adults should even ever see or experience. At first I followed my older brother Martin around. I was his shadow. I thought he was cool and I looked up to him.

Like my other brothers, Martin was involved in gangs. They stole cars and got into fights and used drugs.

When I started hanging out with kids in the neighborhood that were my age, we did the same as the older kids and just copied what was going on around us. We had no idea that the rest of the world didn't live like this.

Moving to a new neighborhood was the hardest thing because the people who already lived there did not accept outsiders. I remember I couldn't walk down the street without being threatened or jumped.

Since I was small for my age, I was especially

vulnerable and an easy target. If you get brave and dare to cross into another neighborhood, you never know what to expect. I remember trying to get the courage to walk past older, bigger kids who had been bullying me in hoping they would let me by. Some days they would and some days they wouldn't.

I quickly learned that if you don't fight you are considered weak and beaten up. No one is going to protect you. You have to protect yourself. This stuff went on constantly. There was no escape from it.

School was just an extension of the brutality that went on in neighborhoods, and it all got much worse when all the city kids were put together in the Phoenix Preparatory Academy Junior High School.

This was not the school to attend if you had to be in Special Ed. I was constantly bullied for this and it really sucked. One time a group of larger kids grabbed me and held me down. They glued my eyes shut.

I remember feeling so helpless and humiliated. After it was over, I thought to myself, how can someone do this to someone else? And I was determined never to allow this to happen to me again.

Being asked by the doctors about the traumatic events in my life made me realize that I had tried to forget a lot of my memories of the horrible things I saw. I have

often wondered if this is why I had nightmares throughout my entire life.

When I was 12, I was in my bedroom and heard a lady screaming outside. I looked out my window and saw a man stabbing a woman over and over and I heard her screams, help me, I'm dying. Some guy tried to stop it, but the man stabbed him too, and the woman was able to get away.

The police asked me questions and I told them what I saw. They asked me, my mom, and my brother if we would be willing to testify, and I remember being scared to death that the guy with the knife would come after us for talking to the cops.

One of the worst days of my life was seeing my brother, Martin, being shot several times right in front of me in my own house.

Just before this happened, I saw the fear in his eyes. He knew what was about to happen. As I looked at him, the bullets blew through our house hitting my brother who was sitting inside the house against the door. I remember feeling the bullets graze my legs. It was at that moment I realized we were not even safe inside our own home.

Around the same time another incident happened in which Martin was chased by a man with a knife. My mother ran after him, jumped in front of the man with the knife trying to protect my brother from being stabbed. I remember

standing there frozen. I could only scream. Everything seemed like it was happening in slow motion.

It didn't seem possible that this could be real. The man went to stab my mother and then ran away at the last minute. She never called the cops because she was scared he would come after us.

I learned to keep most of what was going on with me to myself. I figured no one would understand and everyone had their own problems to deal with. I didn't tell my mother about it because she had a heart -- a bad heart and I hated to make her worry. Plus, I knew there was nothing she could really do to help me anyhow.

I knew that telling anyone would only make things worse. I had nightmares night after night and I would get really depressed. I often wished I was dead so I wouldn't have to live another day of my life. I tried to kill myself several times but I couldn't go through with it.

It seemed I was always searching for some peace in my mind and feeling safety. I would run away when I needed to go scream somewhere. I remember I would look for an open field or an abandoned couch in an alley and scream into the cushions.

Sometimes I would run back to my first neighborhood near Tenth Street and Apache and sit alone in the park, the only place where I felt I had a connection to

something.

After a while, I became numb to everything around me. I had to in order to keep my sanity and try to sleep at night. Drugs helped to numb things but the good feelings from it were only temporary and did not make reality go away.

Everyone carried a knife, a gun, or some kind of weapon for protection. I think people naturally go into survival mode living every day like this. I know I did.

Everyone I knew joined gangs and carried weapons for protection. We had to act tough and be tough just to survive. I can honestly say that I have not felt safe a single day of my life. Trust me, this is a horrible way to live.

When I was younger, I turned to my older brothers for help, but all of them were in the same place. They only knew how to show me how to live another day. At times Martin was there for me, but he was often gone and in and out of jail. Then when he went to prison when I was 14, I realized I was really on my own.

The life we lived took its toll on my older brothers and many childhood friends. Many have struggled with drugs and alcohol problems and ended up in prison or have died, some by violence.

My brother Martin and uncle Manuel are in Mexico

somewhere, their lives overtaken by their addictions. About ten years ago, my youngest sister was drugged and raped. She overdosed on drugs and her brain was severely damaged. Now she is like a little child, and the only words she can say is mama.

Witnessing violence was a part -- was a part of -- was a part of life for me. As a little kid, constantly being hit with these horrible things. I remember trying to make sense of it all.

When you grow up in this kind of world, you don't know anything different, yet you wonder how life could be so ugly and unfair to me.

To me, the world was always a dangerous place where only the strongest survived. I think this is the foundation on which I have built my life.

When I was around 14 years old, I regrettably hit a little boy and stole his bike. His father chased me in his vehicle on the sidewalk. I thought he was going to run me over, and I made the horrible decision to shoot at the vehicle. I had no idea that the little boy was in the vehicle, plus know that I never meant to hurt anyone. I just wanted to get away, and I am thankful neither of them were hurt.

For doing this, I was sentenced to Adobe Mountain, a juvenile prison where I spent my teen years.

Life in Adobe Mountain was an extension of life on the street, only much worse. All of the troubled juveniles were funneled into the place so there were constantly fights.

Like the street, you had to be strong and ready because no one is going to save you. Everyone was expected to fight whenever challenged, and for those who chose to avoid it, they became victims.

It was not an option to tell any of the staff because snitching came with severe consequences, and none of them cared anyway. I first realized how brutal Adobe was when I saw a kid hogtied by two of the male staff and thrown on the bed of a truck. After they drove him through the parking lot and stopped, they took him off the truck, hogtied him, and threw him on to the bed of rocks.

The same thing later happened to me. There were so many kids who committed suicide in there or they tried to. This was going on almost every day. I remember one of my cellies, his name was Julio Cantu. He found something sharp and frantically began slicing his wrist right in front of me. He had a look of desperation in his eyes that I will never forget.

He cried that he couldn't take it anymore and wanted it to be over. It seemed that he really wanted to die. I tried to stop him. There was blood everywhere.

Treatment in that place was nothing more than a

booklet we were given and told to fill out. There were discussion groups but no one dared to talk about anything that might make them look weak to the other kids.

When I left Adobe at 18, I had every intention of starting a new life. My cousin Paulo and I became really close and he became my best friend. We were inseparable. I spent a lot of time at his house and enjoyed being with his family. They were good people. Paulo and I got jobs working with my mom at a swamp cooler company.

Then I noticed that my mom was treated horribly by her supervisor. Everyday she was talked down to and disrespected. She was afraid to stand up for herself and wouldn't say nothing. Maybe because she did not speak English but she stayed quiet. When I couldn't take it anymore I quit. Paulo too.

On the night of Paulo's death, we had been partying. After what happened to Paulo I realized how stupid I was for messing with guns, and this stupidity caused my cousin his life.

Paulo's death was an accident. I would give anything to trade places with him. I deeply regret leaving Paulo. I can only say that I panicked. Over the years that night has haunted me more than anything I ever dealt with in my life.

I have been in prison since this happened. Going

into adult prison at 18 is a very frightening experience. Prison is a primitive and brutal place. It's a magnified extension of the streets where I grew up and my experiences at Adobe Mountain.

All of the conflict and challenges from the past followed me to prison and once again I was faced with having to find a way to protect myself. Being surrounded by people who have done horrendous things and seeing some of those things happen in front of you makes you extra cautious and protective about your own safety.

Being locked up in a tiny cell alone for most of each day is a horrible -- a horrific existence that messes with your head.

Then there are some guards who intentionally do things to make our lives a living hell. If they felt you had too much food on your tray, they would stick their dirty bare hands it. Pull handfuls of food out and hand you the tray. They would rip your cell apart and stomp on your -- stomp or rip up your family photos. They would say things to your face, taunt you and laugh at you knowing you could do nothing about it.

Meanwhile, you are expected to just take it. Coping with it all was really hard and realizing that I had many years ahead of me to live in it was a tough reality. I tried psych meds but quickly realized that psych meds are

for the weak. When an inmate is believed to be weak, he is taken advantage of and victimized.

In prison, you are always looking over your shoulder. You become hypersensitive to every sound and movement because you never know what to expect.

Yes, I have done things I wished I had not and I am sincerely sorry for all of it. Over these years of being locked up, I have had a lot of time to think about the poor decisions I have made in my life and the people I have hurt along the way. I regret all of it.

Looking at it now from a grown man's eyes -- from a grown man's eyes, I wish that I had made different choices. At the time I didn't see -- it didn't seem that there was any other choices because I had to react to the world around me.

I was a little kid when a lot of this stuff happened. And even after all of these years later, I still feel like that boy was trying to find a safe place. I wish with all of my heart that I could reverse time and take another path.

I know at this point I can only change the future. I have read many books, watched podcasts, and do anything that I can to try and understand why I am here today and learn how to better myself.

Believe me, no one wakes up one day wanting to

spend the rest of their life in prison and facing the death penalty. For me, it is a combination of many things that happened along the way and a bunch of really bad regretful decisions. I am tortured every day by the memories and every night by the nightmares of what I have been through and what I have done to others.

I do not wish my life on anyone. I cherish the relationships I have with my family and friends and I love them all very much. I try to provide my nieces with advice, support, and encouragement that can help them make good decisions about their lives so that they do not end up like me.

I have tried very hard to build new relationships with people, which is something that is not easy for me. I think it is because it is hard for me to trust anyone. Being in prison for a long time does that to a person. I work on myself every day trying to be a better person despite the wrong I have done. I feel I have a good heart and I have a lot to offer to others in this world.

To Lino's family, I am so very sorry for what you have been through. I wish I did not have to do what I had to do. When I heard Lino's sister speak of her brother to you, my heart sunk. I was especially saddened in learning that Lino, like me, was a member of the Yaqui Tribe. I regret that I did not know him personally but rather from

the very brutal existence that we both shared.

On the day this happened, all I wanted to do was go to rec and shoot some hoops. I didn't even care how hot it was outside because it was one of the few opportunities I had to get some fresh air.

Then Lino volunteered to go to rec with me and an alarm went off in my head. I knew that Lino had killed another inmate on a rec yard, and I felt that instead of going to rec I was about to enter a war zone.

The last thing I wanted to do was walk into a rec cage with Mr. Lino because after he volunteered to go on the rec yard with me, I believed that one of us was not walking out.

I had no idea what he had in mind. But since he followed me to the rec, I assumed the worst. My only thought was that I had to get him before he got me. There were no other choices for me at this point. Prison rules do not cut you a break from being scared or not wanting to hurt someone or anything else.

Not doing anything or trying to back out were no options I had. For me, to either of these would have been a death sentence. There was no hiding from that. I wish with all of my being that I didn't have to do what I had to do to Lino. That day will haunt me forever.

Please know I am very sorry for what I had to do.

I only hope that I can be forgiven. My apologies are sincere and heartfelt.

In conclusion, I have these few words to translate what is flowing through my heart, mind, and spirit. In my own spiritual connectivity, a great focus of mine is to make a positive impact on the innocence of the young and truly being open about mental health, even providing the effects of my life experience so that they not see things -- these walls -- these prison -- these prison cells in their future or the worst from such pain.

This also includes being more in tune with the real value and quality of female empowerment with my nieces. You have only heard snippets of this. There is so much more in my conversational. This is a process of real growth and a natural progression and connection of love in the best of friendships, the type that inspires and is long-lasting. This I promise to my inner child, that kind and warm soul I miss so much.

If there was ever a greater reason to live and a meaning of purpose, I entail in all my words in the people who feel me with their love and wisdom. I have so much to give and there is much more to who I am. Plus, a lot more goodness to experience.

I appreciate you in taking everything into consideration. My life and spirit is in your hands. Thank

you.

THE COURT: Counsel, would you approach, please.

(An off-the-record discussion was held at the bench out of the hearing of the jury and the court reporter.)

THE COURT: Okay. Ladies and gentlemen, we are now going to move towards the jury instructions.

Polo.

First, if you would please pass down to the end the preliminary jury instructions that are now going to be replaced.

Again, these will be destroyed. If you have made any notes on them just know they are going to be destroyed.

Okay. Does everybody have a copy of the final jury instructions third phase? I'm seeing head nods yes.

Okay. Folks, as we have done before, please do whatever works best for you for receiving this information, whether that's just sitting back listening or reading along with me. Obviously, these jury instructions are very similar to the preliminary instructions, but there's some changes. So, please, let's begin.

All right. Nature of Hearing and Duties of Jury.

Members of the jury, at this phase of the sentencing hearing, you will determine whether the defendant will be sentenced to life imprisonment or death.

The law that applies is stated in these instructions, and it is your duty to follow all of them whether you agree with them or not. You must not single out certain instructions and disregard others.

You must not be influenced at any point in these proceedings by conjecture, passion, prejudice, public opinion, or public feeling.

You are not to be swayed by mere sympathy not related to the evidence presented during the penalty phase.

You must not be influenced by your personal feelings of bias or prejudice for or against the defendant or any person involved in this case on the basis of anyone's race, color, religion, national ancestry, gender, or sexual orientation.

Both the state and the defendant have a right to expect that you will consider all the evidence, follow the law, exercise your discretion conscientiously, and reach a just verdict.

I do not mean to indicate any opinion on the evidence or what your verdict should be by any ruling or remark I have made during the penalty phase. I am not allowed to express my feelings in this case; and if I have shown any, you must disregard them. You and you alone are the triers of fact.

Evidence.

You are to apply the law to the evidence and in this case decide whether the defendant will be sentenced to life imprisonment or death.

The evidence you shall consider consists of the testimony and exhibits the Court admitted in evidence during the three phases of the trial of this case.

It is the duty of the Court to rule on the admissibility of evidence. You shall not concern yourselves with the reasons for these rulings.

You shall disregard questions and exhibits that were withdrawn or to which objections were sustained. Evidence that was admitted for a limited purpose shall not be considered for any other purpose. You shall disregard testimony and exhibits that the Court has not admitted or the Court has stricken.

The lawyers may stipulate certain facts exist. This means both sides agree that certain -- that evidence exists and is to be considered by you during your deliberations at the conclusion of the trial.

You are to treat a stipulation as any other evidence. You are free to accept it or reject it in whole or in part just as any other evidence.

During the second phase of the trial, you found that the state had proved that statutory aggravating circumstances exist making the defendant eligible for the

death sentence.

During this third phase of the trial, which is the sentencing hearing, the defendant and the state presented any evidence that is relevant to the determination of whether there's mitigation that is sufficiently substantial to call for a sentence less than death.

The state was also permitted to present any evidence that demonstrates that the defendant should not be shown leniency, which means a sentence less than death.

Mitigating circumstances may be found from any evidence presented during any phase of the trial. You should consider all of the evidence without regard to which party presented it.

Each party is entitled to consideration of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and what weight to be given to the testimony of each witness. In considering the testimony of each witness, you may take into account the opportunity and ability of the witness to observe the witness -- to observe the witness' memory and manner while testifying, any interest, bias, or prejudice the witness may have, the reasonableness of the testimony of the witness considered in the light of all the evidence, and any other factors that bear on credibility and weight.

The attorneys' remarks, statements, and arguments are not evidence but are intended to help you understand the evidence and apply the law. The attorneys are entitled to make any objections that they deem appropriate. These objections should not influence you and you should make no assumptions because of objections by the attorneys.

Mitigation.

Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Mitigating circumstances are not an excuse or justification of the offense but are factors that in fairness or mercy may reduce the defendant's moral culpability.

Mitigating circumstances may have been offered by the defendant or state or be apparent from the evidence presented at any phase of these proceedings.

By way of example, the circumstances proposed in mitigation by the defendant for your consideration in this case may include but are not limited to mental health or impairment, childhood trauma, medical issues, environmental issues, migration issues, cultural issues, gangs, institutional failures in management, circumstances of

crime, relationship with family and loved ones, proportionality in sentencing, individual characteristics, age, and drugs.

You are not limited to these proposed mitigating circumstances in considering the appropriate sentence. You also may consider anything related to the defendant's character, propensity, history or record, or circumstance of the offense.

You are not required to find that there is a connection between a mitigating circumstance and the crime committed in order to consider the mitigation evidence.

Any connection or lack of connection may impact the quality and strength of mitigation evidence. You must disregard any jury instruction given to you at any other phase of this trial that conflicts with this principle.

The fact that the defendant has been convicted of first-degree murder is unrelated to the existence of mitigating circumstances.

You must give independent consideration to all of the evidence concerning mitigating circumstances despite the conviction.

Duty to Consult With One Another.

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a just verdict. Each of you must decide the case for yourself

but only after you consider the evidence impartially with your fellow jurors.

During your deliberations, you should not hesitate to reexamine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief concerning the weight or effect of the evidence solely because of the opinions of your fellow jurors or for the mere purpose of returning your verdict.

Victim Impact Information.

A relative of the victim made a statement related to personal characteristics and uniqueness of the victim and the impact of the murder on the victim's family. You may consider this information to the extent that it rebuts mitigation. You may not consider the information as a new aggravating circumstance.

Mitigation Assessment and the Sentence/Burden of Proof.

While all 12 of you had to unanimously agree that the state proved beyond a reasonable doubt the existence of a statutory aggravating circumstance, you do not need to unanimously agree on the particular mitigating circumstance.

Each one of you must decide individually whether any mitigating circumstance exists. You are not limited to the mitigating circumstances offered by the defendant.

You must also consider any other information that you find is relevant in determining whether to impose a life sentence so long as it relates to an aspect of the defendant's background, character, propensities, record, or circumstances of the offense.

The defendant bears the burden of proving the existence of any mitigating circumstance that the defendant offers by a preponderance of the evidence. That is, although the defendant need not prove its existence beyond a reasonable doubt, the defendant must convince you by the evidence presented that it is more probably true than not true that such a mitigating circumstance exists.

In proving a mitigating circumstance, the defendant may rely on any evidence already presented and was not required to present additional evidence.

You individually determine whether mitigation exists. In light of the aggravating circumstances you have found, you must then individually determine if the total of the mitigation is sufficiently substantial to call for leniency.

Sufficiently substantial to call for leniency means that mitigation must be of such quality or value that it is adequate in the opinion of an individual juror to persuade that juror to vote for a sentence of life in prison.

Even if a juror believes that the aggravating and mitigating circumstances are the same quality or value, that juror is not required to vote for a sentence of death and may instead vote for a sentence of life in prison.

A juror may find mitigation and impose a life sentence even if the defendant did not present any mitigation evidence.

A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved; or, if proved, as not significant to the assessment of the appropriate penalty. In other words, each of you must determine whether, in your individual assessment, the mitigation is of such quality or value that it warrants leniency in this case.

The law does not presume what is the appropriate sentence. The defendant does not have the burden of proving that life is the appropriate sentence. The state does not have the burden of proving that death is the appropriate sentence.

It is for you, as jurors, to decide what you individually believe is the appropriate sentence. In reaching a reasoned, moral judgment about which sentence is justified and appropriate, you must decide whether the totality of the mitigating factors is sufficiently

substantial to call for leniency.

To do this, you must consider the quality and the strength of the aggravating and mitigating factors as well as the facts and circumstances of the case.

This assessment is not a mathematical one, but instead must be made in light of each juror's individual qualitative evaluation of the facts and circumstances of the case, the severity of the aggravating factors, and the quality or value of the mitigating factors found by each juror.

If you unanimously agree there is mitigation sufficiently substantial to call for leniency then you shall return a verdict of life.

If you unanimously agree there is no mitigation or the mitigation is not sufficiently substantial to call for leniency then you shall return a verdict of death.

Your decision is not a recommendation. Your decision is binding. If you unanimously find that the defendant should be sentenced to life imprisonment, your foreperson shall sign the verdict form indicating your decision. If you unanimously find the defendant should be sentenced to death, your foreperson shall sign the verdict form indicating your decision.

If you cannot unanimously agree on the appropriate sentence, your foreperson shall tell the judge.

Jury Not to Consider Financial Cost of Penalty.

You must decide the appropriate sentence based on the facts of the case and by applying these jury instructions. You must not consider the financial cost of any possible punishment when deciding whether to sentence the defendant to life in prison or death.

State's Evidence.

The defendant and the state were permitted to present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency.

The state was permitted to present any evidence that may demonstrate that the defendant should not be shown leniency. This evidence may include evidence regarding the defendant's character, propensity, criminal record, or other acts.

You may individually consider the state's evidence in determining the existence of a mitigating circumstance or assessing -- or in assessing its quality or value. You shall not consider this part of the state's evidence as aggravation, but only in determining whether the defendant should be shown leniency.

Mitigation Evidence.

The evidence you shall consider in determining mitigation includes any aspect of the defendant's character,

propensity, or record, and any of the circumstances of the offense that might justify a penalty less severe than death.

Mitigating circumstances may include but are not limited to significant impairment and unusual and substantial distress -- duress, as discussed below.

You may consider any mitigating evidence in deciding whether leniency is appropriate. This includes any variation of the mitigating circumstances that I have specifically defined in these instructions. You are not limited to considering these mitigating circumstances.

Significant Impairment.

It is a mitigating circumstance the defendant's capacity to appreciate the wrongfulness of the conduct, or to conform his conduct to the requirements of law, was significantly impaired, but not so impaired as to constitute a defense to prosecution.

The defendant has the burden of proving this mitigating circumstance by a preponderance of the evidence.

Significantly impaired means that the defendant suffered from a mental illness, personality disorder, character disorder, substance abuse, or alcohol abuse, at or near the time of the offense that substantially reduced the defendant's ability to appreciate the wrongfulness of the conduct or conforming his conduct to the requirements of the law.

If any juror finds by a preponderance of the evidence that the defendant was significantly impaired then that juror shall consider this impairment as a mitigating circumstance when determining whether to sentence the defendant to life imprisonment or death.

The effect you give to any mitigation is left to your sound discretion in determining whether there are mitigating circumstances sufficiently substantial to call for leniency.

Duress.

It is a mitigating circumstance that the defendant was under unusual and substantial duress although not such as to constitute a defense to prosecution.

Duress means any illegal imprisonment or legal imprisonment used for an illegal purpose or threats of bodily or other harm, or other means mounting to or tending to coerce the will of another and actually inducing him or her to do an act contrary to his or her free will.

If any juror finds by a preponderance of the evidence the defendant was under unusual and substantial duress, then that juror shall consider such duress as a mitigating circumstance when determining whether to sentence the defendant to life imprisonment or death.

The effect you give to any mitigating circumstance is left to your sound discretion in determining

whether there are mitigating circumstances sufficiently substantial to call for leniency.

What remains is the closing instruction, which I will read to you after completion of the closing arguments by the attorneys.

Mr. Tallan, is there any correction or addition to the reading of the instructions?

MR. TALLAN: No, Your Honor.

THE COURT: And Mr. Goddard?

MR. GODDARD: No, Your Honor.

THE COURT: Okay. Counsel, if you would approach, please.

(An off-the-record discussion was held at the bench out of the hearing of the jury and the court reporter.)

THE COURT: Ladies and gentlemen, since we've been at it for about an hour, and I don't want to interrupt closings, let's go ahead and take a quick comfort break. Let's try to be back in here and ready to go in five minutes.

THE BAILIFF: All rise for the jury.

THE COURT: Please remember the admonition.

(Brief Recess.)

THE COURT: Folks, please have a seat.

Okay. We're back on CR201502140. We have

parties, counsel, and all 16 jurors.

Mr. Tallan, please proceed with your closing when you're ready.

MR. TALLAN: Thank you, Your Honor.

Ladies and gentlemen, Your Honor, gentlemen, this is about whether you are going to sentence Julio to life or death. There's so much I could say. There was so much I was going to say, but what can I say more or better or more heartfelt than what you already heard this morning from Julio?

I don't have any fancy rhymes, you know, no where we stand, where we command, where we stroll, we control, or make it, take it.

This isn't a game. This isn't a rhyming thing. When we started with voir dire, we talked about -- we talked to you about the decision that you would ultimately have to make, life or death. And you said and you heard people say, wow, I hadn't thought of it before, that's a really hard decision. I don't know if I can do it. I think I can do it. I hope I can do it. I can make that -- all 16 of you decided and said you could make that decision.

Now is the time when you have to make it, and I hope it's not an easy decision because it shouldn't be an easy decision.

It should be something you struggle with,

something you think about. Probably something you have been thinking about for the last nearly 30 days of trial, of us being here. This is day 24, not including other days that we've been here when you haven't.

You haven't deliberated yet. Not supposed to deliberate yet on this issue of life or death, but I'm sure it's been going through your mind. How could it not be?

So, yes, it's going to be tough. It's a decision you have to make, and it's a decision we all have to live with.

So Julio Salazar -- I was going to go through his life, about his -- you know, all this, but you heard that from Julio. He said it better than I could about his life. You heard it from all the experts. I'm not going to go over all the evidence you heard the last two and a half, three weeks.

You have your notebooks. You made notes. You listened. You paid attention. You heard. You don't need me to repeat it all to you. I'm going to repeat some of it to you. I can't not talk. I'm a lawyer.

But we're not going to go over everything. But I know you've remembered the important stuff like how Julio, after the accident and after the trauma his mother suffered in utero, had problems from the very beginning as a toddler, as a little kid, as an adolescent, headaches and lapses in

thinking.

His mother talked about mental imbalance and impulsiveness. You have heard so much about impulsiveness. ASPD causes impulsiveness. PTSD, impulsiveness. ADD and ADHD, impulsiveness.

So when you go from zero to 100 like that, and you don't really think about it, you react and you do it. And when you start, it's like you can't stop yourself. It's like having a temper tantrum, but the worst temper tantrum ever happened that day.

You heard about behavioral problems in school, at home. You heard about how he would bang his head as a child. We even saw on the video when he went down to the police station and confessed to killing his cousin in a reckless, accidental death, how Julio was banging his head after the officer left.

And you heard from the experts, that's a sign of how people who have these disorders sometimes deal with it. They bang their head.

They try and reset their brain. He acted out. He had suicide attempts. He had a lot of aggressive behavior, no doubt about it, at school, in the neighborhood, other kids, Adobe Mountain.

But Julio is not on trial for his life, for what he did as a kid. He was sentenced to that. He went to

Adobe Mountain. Spent his teenage years, 14 to 18, at a juvenile prison. He got out. He was out for about three months. He was working off and on. Worked with his mom. Hanging out with Paulo. He fell right back into old habits, carrying around a gun.

They were drinking. They were doing drugs. Julio killed his cousin, and note that was another hugely traumatic event in his life as you heard and as you saw.

He's not on trial for life or death for killing his cousin. He pled guilty to that, to manslaughter. He was sentenced to 15 years.

MR. GODDARD: Objection, Your Honor. May we approach?

THE COURT: You may.

(An off-the-record discussion was held at the bench out of the hearing of the jury and the court reporter.)

THE COURT: You may proceed, Mr. Tallan. Overruled.

MR. TALLAN: Julio's not on trial for that. You found that as one of the aggravators to make him eligible for the death penalty, but he's not on trial for that.

He went to prison, age 18. You heard him describe what that was like. You can probably imagine what that's like. If you have children, can you imagine if you

have an 18 year old, and your 18-year-old child is going to prison for 15 years.

He goes to prison and he's scared. He seeks protection. Now the state has tried to make this out as a gang case. It's a gang case. It's a gang case. You heard more about gangs than you ever heard about the offense itself.

And we've said all along, no, this is because Lino Flores was a sex offender, a rapist, a known killer. He had killed before on the rec yard, and that's why Julio did what he felt he had to do.

But, you know what, whether you agree with the state that this was gang related or whether you say, okay, could have been gang related but it was also rape related. It was definitely rape related. It doesn't matter.

Because either way, Julio didn't have real free will. We'll talk about that. He didn't have a real meaningful choice. Like he said, like you heard even from the state's experts, he did what he had to do, what was expected of him. If he didn't do it, it would be done to him.

So he goes off to the prison and he's an angry man -- excuse me -- he's an angry boy. He's an angry boy. He's 18. And he starts acting out in prison. He's got rage inside of him, which is understandable.

He doesn't get treated so well by the guards. There are good guards. Most of them are good guards. Most of them want to do the right thing. But just like with any group of people, there's always going to be some bad apples.

Julio attacked people. He did. Especially Sergeant Flores. He stabbed Sergeant Flores in the head and he was charged with that. He pled straight up guilty to attempted murder and was sentenced to 21 years back in 2007.

But for this event nearly -- will be nine years ago next month, Julio would be getting out in a few years. He's never getting out now. He's asking for the least punishment, which is life in prison without any possibility of ever getting out, but not death.

You heard about how he was diagnosed with problems from the beginning. You heard the experts. Now remember when it comes to significant impairment, we don't have to prove that beyond a reasonable doubt. We think we did, but the state put on one expert, Dr. Seward, to say that Julio has antisocial personality disorder. Probably has attention deficit disorder, but he didn't really think he has posttraumatic stress disorder.

He said maybe some parts of it even though he agreed with me on that checklist he had all these things, but he said, no, he's just malingering. And we'll get into that, but do you think it was proven at least more likely

than true that Julio has all those things?

That's for you to decide, to weigh the credibility of Dr. Abrams and Dr. Hyde, Dr. Gomez, Dr. Miller, Dr. Ouaou against Dr. Seward.

Those things were seen from his early childhood. He wasn't making that stuff up, you know, back in 2020 and 2021 when Dr. Seward saw him, 2022. It goes all the way back. You've heard about that. His school administrators, counselors.

Why do we keep showing this picture of Julio, you know, we cut it out. It's one of the only photos we could find where Julio was smiling. It wasn't just because he didn't like -- well, he still doesn't like to show his mouth because the top part is deformed from the accident. He doesn't smile in those photos because he did not have a happy childhood.

His younger sister, you heard -- and he told Dr. Seward this as well. You saw the video. He doesn't like to drag his family into things. He doesn't want them dragged into things. He doesn't want to talk about that stuff.

He didn't want to drag his sister in here and talk about her being raped. He didn't want to bring her in. He didn't want to -- he didn't -- but he told you this morning about that. We only heard about it recently.

You heard about how he was raised. You heard Dr.

Miller on the stand. He talked all about the risk factors. The state put on their expert, Dr. DeLisi, who has only testified once before to say, no, no, there's no risk factors because it didn't happen in the house and his parents didn't do it to him. Dr. Miller and Dr. Gomez told you how that's not -- just not true.

I guess you heard it from the words of the school counselors, the juvenile evaluations. Ms. Linda Porter, the school counselor, when they went to the school, when Julio allegedly, you know, held the knife to the kid's throat. Even though the witness said, I was running by and I saw that Julio only took the knife out of his pocket when the big kid, the 17 year old, came running towards him yelling.

The officer went down there to interview Julio and Manuel, and the first thing that the school counselor told the officer that clearly must have struck a cord because he actually put it in his police report was -- he was told Julio had emotional and maturity problems.

Was he malingering and setting that up when he was 12 years old for what might happen in the future? No.

And when he was 14 and he shot at the car that was chasing him down, he said stupid thing to do. Some things, an impulsive, impaired 14 year old would do.

He talked to Dr. Berman. Of course, he didn't open up to Dr. Berman. He's 14. He's never met this

court-appointed psychologist in his life. He tells him some things. He doesn't want to admit to anything -- everything. Who at 14 -- remember when you were 14?

You would be embarrassed to be seen with your parents, never mind to tell about all the dysfunction in your house, about how you tried to commit suicide.

So, yes, he told him some things but didn't open up completely. Yeah, he told Dr. Berman at age 14 that his real father back in Mexico was dead. Would you want to admit that the 42-your-old man who fathered you when your mother was 17 and already had two children and beat her and drank and beat her and beat her and beat her -- you got the affidavits from the mother. We got the affidavit when she was still alive and from the aunt that talks about that. It's in evidence. Read it.

Would you want to admit that he's alive and your father? Is that unusual for a 14 year old to deny that? No.

Well, what did that evaluator say? Julio looks like he's been through a lot. He appears quite world weary. That's from the transfer report by -- I forget her name, the probation officer who did the transfer report to say, yes, we're not going to put Julio on probation. We're going to send him to juvenile prison.

He was described as a youngster who was seen,

participated in, and experienced a great deal more than anyone his age should. A 14 year old who looks 12. So they recommended he be sent to juvenile prison, to Adobe Mountain, but in that report it also recommends that he get -- go to special education and get intensive one on one and group counseling at Adobe Mountain. He got none of that.

You heard from the state's witnesses -- or excuse me -- state's evidence. Okay. State's evidence. So we heard all about the defendant Lino Flores. You saw the videos. It wasn't disputed that Julio killed him. It was disputed whether, you know, it was first degree or whether it was second degrees, whether he was acting impulsively, and you found it was first degree.

Okay. How much have we heard about Lino since then, since his sister spoke? Pretty much nothing. Do you really think the state is here because Julio Salazar killed Lino Flores, a rapist and murderer in his own right of someone on a prison rec yard? Do you think without anything else they would be seeking the death penalty against Julio Salazar? No.

And that's why what you heard the last few weeks is all about Julio's other stuff because they have to make him evil. Because you only kill what is evil. And if they don't make him evil in your eyes, they think you won't kill him.

So we heard all about juvenile offenses that you heard were never charged, the threats at school. Okay. Well, the threats were made by the two other kids, but Julio was with them. So they didn't charge him. They did a report on it but that was it. And him holding a knife to a four year old and a five year old's throats. Then the evidence came out that there was a witness who saw it and said, no, Julio only pulled the knife out after -- his name was Orlando, the 17 year old, came running over at him.

They go and talk at the school and they talk to Julio and they talk to Manuel and it's supported, and the officer himself, you saw the report, said there's not evidence -- you know, sufficient evidence here to charge Julio with an actual offense. The state brought it up to you to try to make him as evil.

And, yeah, he shot at a vehicle chasing him and he was sentenced to Adobe Mountain at 14. And, yeah, he accidentally shot his cousin.

And, yes, he stabbed Sergeant Flores, and he pled guilty to those, and he offered to plead guilty in this case. I'll plead guilty and take a life sentence. The state said, no, you are evil, we have to kill you.

So the state put on all their witnesses, all those police officers from 30 years ago, and the guards who came in to talk about things. Some who couldn't remember

anything.

One of the things you have to do is look at the credibility of witnesses and judge what they said based on credibility. So you heard all about the juvenile offenses, even those with no charges brought. You heard about Officer Greenwald.

But even there, how many times did I have to say, okay, it's a terrible thing that happened, but one of my jobs is to ask some follow-up questions to tease out the whole truth.

There's so much evidence about the killing of Lino Flores. Why did these witnesses think that they had to spin things about all the other stuff? Talk about, oh, he had a skull fracture. No, he had a black eye.

If he had had a fracture of his face, don't you think they would have criminally charged Julio Salazar? It wasn't charged. He was disciplined. Had all his stuff taken -- you know, what liberal rights he had taken away.

Yeah, he was disciplined. You heard about the chow hall fight, which he wasn't even disciplined for, but they still brought him in. And the paper spear where he tried to roll up a piece of paper and put a point on the end and push it through his food trap to supposedly stab someone walking by.

And he had his pulling away from the guard and running after for 20 feet. Remember that? He didn't even want to admit -- agree what 20 feet was. He kept wanting me to back up more and more where he ran after the other inmate and was yelling at the inmate. So that officer had to run after him, get in front of him. Say, hey, stop, stop, stop, and Julio stopped.

And he said, yeah, he wasn't yelling at any of the staff. He wasn't yelling at me. I've never had a problem with him. He was yelling at the other guy.

Then there was that, you know, we're going to have problems. We're going to have trouble. The guard got up on the stand -- how many times did Mr. Wilkison or I have to approach and say, now, wait, wait, do you remember saying this in the past? That's not what you originally said, let's correct it, and they would then correct it.

For instance, that guard said that Julio told him, you and I are going to have a problem. He said, wait a minute, that's not what you put in your report. That's not what you told us before. You said -- he made this ambiguous statement, if you make a discipline on me, we're going to have a -- we're going to have a problem, and he was referring to the other inmate. He and that other inmate were going to have a problem, because the guard said other than that he was never aggressive to me.

Even when I told him, I'm putting you on report for saying we're going to have a report, he didn't yell at me. He wasn't aggressive at me. He just said if you do that, we're going to have a problem.

But they had to make it seem like it was more, like it was more, like it was more, like it was more because they had to make Julio seem evil.

So this happened nine years ago. Since then they could bring in three incidents that Julio's been involved with: Harassment of Officer Mills where he passed her the nefarious love letter, the missed kick. You saw the video where someone he had a problem with in the past walking towards him and he tries to kick out with his flip flop with the guy and misses him, and suddenly there's eight guards right there.

And what was it? It was another example of, you know, them not following policies. The one guard told you, well, that time when he ran away from me, tried to run away from me, I had him -- there was someone else coming down the hallway. So I had him in this little area so they couldn't get near each other because that's the proper thing to do.

But in that kick video, what are they doing? They are walking two inmates right towards each other.

Then there was the other one. There were two. You know, those -- yeah. Let's not forget the punching

through the -- the grabbing and punching through the food slot.

You saw Deputy Warden Sanchez, my awesome demonstrative exhibit. Eww, yeah, that was heinous. Let's kill him because he tried to reach through a flood slot and hit someone he had a problem with.

So, yes, Julio has done some acting up in the last nine years, a love letter, and two basically failed incidents, trying to kick someone and running after and yelling at someone in the last nine years -- they brought in -- that you actually heard evidence about.

The Julio Salazar you heard this morning is not the Julio of nine years ago. He has grown. He has changed. He has become a different person. You even heard some evidence -- some testimony about that, about how as people get -- inmates get older, they kind of age out. The way you act in your twenties and early thirties.

Remember, Julio was 32 when this happened. Now he's 41. The older you get, you slow down. You mellow out. We never claimed that Julio Salazar is -- that there's no future dangerousness with Julio Salazar. I never said let him out.

He can be controlled. He can be guarded properly. He's in his cell 23 hours of the day anyway, seven days a week. One hour a day he can get out and either

take a shower or go to -- you heard about it, that indoor walled rec area where there's a gate where he can kind of see the sky. No fresh air. You don't actually leave the pod. No more going out for Julio Salazar.

So, like I said, why are we really here? Because of that absolutely terrible horrible thing he did to Sergeant Flores back in 2007. But for that incident, do you think we would be here? No. But Julio is not on trial for that.

You found the aggravating factor the fact that he was already in prison. Well, yeah, of course, it's a prison killing; that he killed Mr. Lino Flores, you found i a cruel, heinous and depraved -- cruel, heinous or depraved way.

You found it wasn't cruel but it was heinous or depraved. Kept on attacking him, kept on stomping on him and choking him after he was probably already dead.

But he's not on trial for Sergeant Flores. Twenty-one years he's been serving for that, 2007. But now he's never getting out if you show him leniency. Even that -- I don't know why but even that the witness got up there and just wouldn't tell the straight truth.

The state even -- the state in the first phase talked about it, and I objected. You know, he was stabbed multiple times in the head. No. He was stabbed once and it

didn't penetrate his skull like you were led to believe. It didn't go into his brain like you were led to believe.

The evidence was when he got there, he was sitting and he was talking. And in the, like, half an hour it takes to get an ambulance there to take him to the helicopter out front of the prison complex, he's talking. But what does the officer say? I took his dying declaration. Okay. That's an exaggeration?

Yes, he had the shank in his head and it looked -- it was bloody and it looked way -- but head wounds bleed a lot and it looked way worse than it was.

So, yeah, they thought maybe this was really bad. They did the proper thing, get him to the hospital as quickly as possible. That's the right thing to do. That's what they should have done.

But after the fact when you have seen that the metal piece went under the skin between the skin and the bone, and he goes to the hospital and they do the CAT scan and they immediately pull it out, put in a stitch or whatever, and then he's discharged in 90 minutes from the time he gets to the hospital.

Okay. Tell the truth. Tell the straight truth. That's what happened, not he was stabbed in the head multiple times and it might have penetrated his brain, and I took his dying declaration.

You have got so much evidence. Just give it straight because, otherwise, why should we believe everything you say if you feel like you have to exaggerate the minor things?

So you heard from the state's witnesses. I lost my place. You heard from Mr. Boggs, Keland Boggs. We heard from him and heard from him and heard from him all about gangs. Keland Boggs is like that workman who only has a hammer. Because he only has a hammer, everything he sees is a nail.

So he bangs and bangs and bangs about gangs. The black jaguar, oh, that must be a gang thing in a letter. Well, no. You saw Julio's been -- nickname was Kool Kat since he was a kid in the street gang.

Oh, he's sending that code stuff in this letter to Jennifer Vierck. Oh, wait a minute, she's a married white woman who has become a pen pal with Julio.

But even he said Flores might have meant to attack Salazar and he had to do it. Mr. Boggs even told this to Dr. Seward. When Julio went into that rec cage, he volunteered to go in first and then Lino Flores volunteered to go in with him.

Keland Boggs told Dr. Seward, not under questioning from some defense attorney -- from a defense attorney. He volunteered to Dr. Seward just when the two of

them were talking by themselves, yeah, it's entirely possible that in -- he even calls him Kool Kat. In Kool Kat's mind, and he says I refer to -- I think of Julio and refer to him as Kool Kat, that in Julio's -- Kool Kat's mind that Mr. Flores might attack him as soon as they get in there.

No. Lino Flores doesn't attack him as soon as he gets in there, but Julio never turns his back on Lino Flores. And it's only when he goes to get -- you see it on the video -- to get more water, he dumps the water out of his water bottle, takes the lid of the jug off to go dip it in and fill it up, and that's when he sees the weapon and he grabs the weapon. Does he put it like in his shorts and go play basketball for a while? No. He impulsively and immediately attacks.

And we'll talk more about the -- you know, the claim of planning and this and that. But the key thing from Keland Boggs, he had to do it.

Then you heard from Mr. Munoz, the former SSU, the security unit, special security unit guy. What did we take away from Mr. Munoz? The same thing. And he told Dr. Seward the same thing, he had to do it.

This is prison culture. Julio is prisonized (sic), institutionalized. You have to do it. You don't have a choice, attack or be attacked. What you don't do to

them will get done to you.

We also called in Officer Reyna, the current one. He told you about the prison status of rapists. Even he didn't want to admit that he had told me that rapists were -- in prison culture were lower than whale shit. He didn't want -- even I had to tease out of him, come on, here's your statement. What were the exact words you used? He didn't want to say.

Why not? Is it because he knows it would help Julio? They don't want us to do anything that might help Julio even if it's true.

Had to do it. Then he talked about, you know -- Mr. Boggs kept talking about, oh, you can renounce and debrief and go to a PC yard and you'll be fine, if we accept you, if we decide we want to put you there.

You may renounce and we decide we're not going to put you there. We're going to put you back right where you came from. That's a possibility.

Mr. Reyna, who stills work at SSU, came in and told you, you know what, yeah, that's an option but -- you know, as Mr. Boggs said. You debrief, you renounce, you have got a target on your back for the rest of your life, a clock that never runs out. Time never expires.

They will try to get you in prison. If you get out of prison, they will try to get you out of prison. As

Ms. Boggs said, there's all these Arizona Mexican Mafia members outside of prison.

So if Julio was a member of the Mexican Mafia and he renounced, he was a dead man. And Carlos Reyna told you, those PC yards, even those you're not safe on especially since they've been infiltrated. People get stabbed. People get attacked. It's not even safe on a PC yard.

And, yeah, Julio may have been able to survive until he got out but then he would have a target on his back for the rest of his life and maybe his family would too. So why did all -- you know.

The state put on Carla Reyes, a terrible thing, shooting a cousin. You saw her credibility. Her understandable hatred of Julio clouded everything she said. She didn't want to admit anything.

But what did she say? We had kind of a normal family. They were like the normal ones of -- branch of the Torres family. When Julio got out of Adobe, he wanted to hang out at our house all the time.

Why did Julio want to hang out at their house all the time? Because he was craving what she had, parents who loved her, a little better economic situation. He (sic) didn't have brothers beating her and trying to toughen her up.

He didn't have parents that were gone all the

time and you're being raised by uncles who beat you and touched you and -- she did admit -- didn't admit. She volunteered it actually when the state was questioning her. She said Julio was a troubled teen and paranoid, and that's how her branch of the family saw Julio. Even she recognized Julio's mental illnesses when he was a kid.

Then the state put on their three experts, Dr. DeLisi, Dr. Whitlow, and Dr. Seward, all three who work with The Forensic Panel, although Dr. Seward was hired directly for this case, but he worked -- does do -- get referrals from The Forensic Panel.

So Dr. DeLisi and Dr. Whitlow from The Forensic Panel were hired to come in, neither of which have ever met Julio Salazar, neither of which have ever talked to Julio Salazar.

Dr. Whitlow, he looked at the MRI that Dr. Hyde ordered and a different radiologist read. Dr. Hyde is not a neuroradiologist. He's a neurologist.

Dr. Whitlow said he could tell from that MRI that there was no head injury. The evidence is there. Well, how credible is he? And he said, no, those white matter lesions, that's not from a traumatic brain injury from being hit by a car or having bike accidents, or playing the choking game that you heard about where they -- the kids choke each other out because it's a -- you get starved of

oxygen and it becomes like a high, kind of like sniffing glue, which they were doing as well. Sniffing glue and sniffing paint to sniffing gas.

Dr. Hyde said that's what the white -- those white matter lesions, they are either from the head injury or the inhalants.

Dr. Whitlow came in and said I've never seen Julio, but I say, no, those are from the migraines -- those are from migraines.

Julio suffers from headaches but not migraines. At the prison they give him Excedrin or aspirin if he needs it, not those first-line medications I asked Dr. Whitlow about, like Imitrex and things like that.

Then Dr. Hyde -- we brought Dr. Hyde back, and Dr. Hyde said, no, absolutely Julio has facial injuries and head injuries. I physically examined him. I saw them. I pointed them out, and they were pointed out to you.

And Dr. DeLisi, the sociologist. He's not a psychiatrist. He's not a neurologist. He's not even a psychologist. Dr. Miller came in and told you -- you heard all about adverse childhood events, which we'll briefly go over.

But Dr. DeLisi came in and said, no, no, no, no, there's no trauma in Julio's childhood. His parents didn't do it to him. And being beaten up in the neighborhood or

having your eyes glued shut in the neighborhood, or seeing your uncle shot in the neighborhood, or seeing a woman stabbed outside your house in the neighborhood doesn't count. Those aren't risk factors. That doesn't affect Julio. Was he credible?

Dr. Gomez came back and corrected that. He said, absolutely not, that's wrong. The state wanted to argue with Dr. Gomez from an article from 1998 and 2000, thirty-year-old articles. Dr. Gomez says, you know, that was the beginning of research. That was 30 years ago. We have learned so much over the last 30 years. I've probably read about 500 articles in the last 30 years on this stuff.

It's changed. And that one article you are referring to, no, that article is wrong. Julio absolutely did have adverse childhood experiences and risk factors.

So who did we bring in? Well, you heard from James Aiken, the former prison warden. His experience and curriculum vitae, his CV, which is in evidence, speaks volumes. He told you about the institutional failures at the Florence prison that allowed not just this to happen, but all those other things on the board they put up that happened in prison, that allowed those to happen.

Talked about you have policies. The policies are there, but you have to follow those policies.

And the DI 326, this rec program, where they

tried it first time and two of the inmates got into a fight. They said, okay, let's put it on pause and they tried it again. This time two inmates brought out weapons and got into a fight. So they put it on pause.

And then the warden, Morris, who was going to leave -- so he said get it done before I leave. So they tried it again, and this was the first day that Julio's pod was going to be brought out there. And when they used that rec enclosure before with the mental health inmates, they had a guard sitting there in the chair watching the two inmates in the basketball enclosure the entire time.

The empty chair was still out there that day but they didn't use it. They didn't search, properly strip search the inmates that day. They didn't search the water bottle of the guy who brought out the weapon. They didn't search the enclosure before they put Julio and Lino Flores in it. They didn't check the water cooler. They didn't look around and see if there were weapons in there. They didn't wand people.

All those failures. There was supposed to be someone walking around randomly at least every 30 minutes to check on them. They weren't supposed to shift change while people were out there in the rec enclosure, yet all those things happened that day.

The no-rec list. Lino Flores was not even

supposed to be out there that day. He was on the no-rec list. They knew that it was not safe, based on his criminal history or the fact that he was a member of the old Mexican Mafia and there were members of the new Mexican Mafia on that pod, to bring him out with those other people.

You heard, what was the split between the old Mexican Mafia and the new Mexican Mafia? It was over the leadership because so many of those leaders were sex offenders, and the new Mexican Mafia people didn't want sex offenders as their leaders. Because we all know the status of sex offenders in prison.

So either way whether you think this was gang related or not gang related, it all comes down to the fact that Lino Flores was a rapist with a known reputation of killing others on the rec yard.

So he wasn't even supposed to be out that day, but he had all these coincidences. They put up the wrong rec list that doesn't have the second page with his name on it.

Then you heard about how they didn't even have the -- that list out there first. They had to run and try to get one, and they got the one that didn't have the second page on it. So they bring out Lino Flores.

The coincidence that supposedly it's planned -- if it's planned how do they know that Lino Flores is going

to be accidently and mistakenly brought out that day?

No. It was just the perfect storm of mess-ups, the perfect storm of people not doing their job properly, the coincidences of Lino Flores being brought out that day when he wasn't supposed to; and Julio Salazar, like he told you this morning, wanted to shoot hoops out in the fresh air for the first time in years. He volunteers to go in there first and then Lino Flores volunteered to go in.

They wanted to argue, oh, they rocked him to sleep, they rocked him to sleep, and made him think he was safe. They told him to go out there.

And I still maintain, do you think anyone was rocking Lino Flores to sleep? If it was planned, how do they know that Lino Flores was going to volunteer to go in after Julio Salazar? Never mind the fact the guards was the one who chose who go in.

He said, who wants to go in next? People volunteered, and he picked that person. He said, okay, Julio, you get to go. That was Officer Williams.

Then Officer Chaney heard Officer Williams do that. So Officer Williams did the same thing, okay, who wants to go? People volunteered. He said, okay, Lino Flores, you volunteered, you get to go.

So if the state wants to argue it was planned, then it sounds like the guards were in on it. I don't think

it was planned. It wasn't planned. It was that perfect storm of bad coincidences, and that's why we're here today.

How could you -- James Aiken told you, how could you not have someone watching the recreation enclosure? That is the most basic idea of prison security. If you are going to have people out there, you watch them. And it's even -- if you're going to have cameras out there, you have someone out there and you have the cameras being watched. Where do these cameras go to? To a closet where no one is watching. That's fine for after the fact.

You were told, you know, the main job of the prison administration and guards is to keep staff and inmates safe. Well, what's the point of having cameras that aren't watched except for after the fact? That's not a way to keep people safe, guards or inmates.

And he pointed out -- I won't go through all of them, the institutional failures at the Florence prison. And he never said, you have to have six people. What he said was, even if it were to take six people, you either get six people or you don't do it.

Just like there was a question why after it happened did all the guards congregate at the door to the rec enclosure but not go in? And you heard, because we're not allowed to go in unless we have a five-to-one ratio.

The guards weren't allowed in to that enclosure

unless there were at least five of them, which is kind of what James Aiken was saying. If it takes five or six, you wait until you have five or six to do something.

If you forget your handcuffs, you don't open the door to the cell until you have got handcuffs. You don't let an inmate, Julio Salazar or otherwise, come out and start assaulting you because you have opened the door without handcuffing them and having to kneel on the floor facing the other direction. The fact that you forgot your handcuffs is not an excuse. If you are going to do it, do it right.

We brought in Amy Nguyen and Dr. Miller. Amy Nguyen just presented the census data. We asked her, can you pull up census data, create maps for where Julio lived to show what the data was related to poverty and single mothers, and lack of education, and things like that.

Well, one of the things she happened to also pull up was lead poisoning. We never claimed that Julio was -- had lead poisoning, but that's what the state latched on to and they put up that map of Pinal County, not even -- where Julio never lived until he turns 18 and went to prison. Every one of those counties in Pinal had lead poisoning. That was their rebuttal of Amy Nguyen.

Okay. One, we never claimed lead poisoning; and, two, that's Pinal County. What does that have anything to

do with where Julio lives? They're just trying to distract you.

The fact was Dr. Miller used Amy Nguyen's data regarding poverty and lack of education and unemployment and things like that, not lead poisoning, to talk about Julio's risk factors and adverse childhood experiences, and you heard all about them.

You heard about Julio's childhood. And unlike others, Dr. Miller didn't try to testify beyond his expertise. He stuck to his expertise. He didn't make any diagnosis. He said, I'm an expert on adverse childhood events, experiences, and risk factors, and that's what I'm going to testify to.

And he talked about, how could anyone have a childhood like Julio Salazar had and not have risk factors? He talked about the more risk factors you have, the more likelihood you are going to offend.

Yeah, you are going to wind up with a conduct disorder as a child, which leads to antisocial personality disorder as an adult and you are going to wind up in prison. Seventy percent of people in prison, because it's based on -- a big part of antisocial personality disorder is you break the rules, you do what you're not supposed to do.

Well, yeah, those are things that get you in prison. So, obviously, people in prison in ASPD, but he

talked about those.

He also spelled out for you -- oops, sorry. Wrong way -- all the risk factors and stressors that Julio had, that there are -- these are the risk factors that there are and which ones Julio had. Look at this chart. It's in evidence.

The learning problems at school, being victimized by others and witnessing others being victimized, Julio's substance abuse, the bullying, the aggression, the impulsivity, delinquency, theft, and robbery.

His social isolation, emotional problems, going home and just wanting to spend time in his room. Or, as he told you, leaving home, running away from home, going out to an empty lot or finding an abandoned sofa and just screaming to get his pain out.

The depression, him trying to kill himself, the anxiety, the nightmares, all the stuff he witnessed in the neighborhood.

And then deviate peer affiliation: Street gangs, youth gangs. Yeah, Julio was a member of the Varrio Hispanic Boys whatever, VHHB, Hispanic Homeboys. Just like everyone in his -- almost -- well, not everyone obviously. Just like most of the kids in his neighborhood were.

Why do you join a gang when you're a kid? Because there's something that's not there in your life that

you want, a sense of belonging, a sense of family, protection from others, myriad reasons to join street gangs, and Julio did, just like his brothers did, just like everyone he knew did at school, all of his -- people he knew. Then, of course, the suicide.

How can you have all these risk factors, all these experiences, and not be damaged? Not have a significant impairment that's going to affect your ability to comply with the law and follow the law.

Dr. Ouaou told you that children -- because he was cross-examined, well, Julio didn't tell this -- when he was 14, he didn't tell this psychologist this stuff. And when they did the -- just the straight competency hearing where -- a competency evaluation where the only question was is he competent to stand trial?

Does he know who the judge is, does he know who the defense attorney is, does he know who the prosecutor is, what their duties are, and can he assist in his defense? If he can do those things, you're competent.

So Dr. Cooper-Lopez did that evaluation. She said, yeah, he's competent. That's what she was looking at. She wasn't delving into his childhood.

So, no, he didn't tell her everything. He told her some stuff. Of course, there's going to be inconsistencies. And Dr. Miller told you how that's normal,

especially how children are embarrassed to talk about and are -- minimalize.

You also heard about the Adobe Mountain -- the Department of Justice, the Federal government had to get involved in Arizona's juvenile prison, Adobe Mountain, because conditions were so bad. And, yeah, the report was done in 2002.

Do you think that all these problems popped up after Julio left in 2000? No. These things were going on while Julio was there as well, and you heard that from Dr. Miller and Dr. Gomez, problems with fighting and suicide.

And, yeah, they said Julio needs special education. He didn't get that. They put him in a classroom. They -- no special education teacher. They did stuff. He couldn't pass the GE -- he tried three times to pass the GED. He can't do it.

He can read. His reading is not so bad but he can't do math because he's got cognitive impairments. He didn't get that one on one or even the proper group therapy that he needed.

And Julio told you, yeah, they had group therapy but no one was going to admit to problems when you're 14, 15, 16, 17, in front of other kids who are then going to use that against you and who view you as weak. He needed one on one where he's talking confidentially to a counselor, and

they didn't even have it according to that report.

I pointed out some of those things in that report where they talk about all the things they didn't have. In no way do those things just pop up right after Julio left. Otherwise, it would have been handled by the state and not even gone to the Federal Department of Justice to come in and intervene because the state wasn't doing enough.

Dr. Seward wanted to just harp on, oh, it's all self-reported, it's self-reported, self-reported. No. Well, first of all, a lot of these things you can only self-report, as Dr. Hyde and Dr. Gomez and Dr. Abrams told you.

When you're evaluating -- especially when you're evaluating PTSD, these are things you report you feel, you experience, your nightmares, your not wanting to think about things.

I can't tell -- I can't testify about what someone else doesn't want to think about. No, that person has to self-report.

You heard so much from his two brothers, Jesus and Alphonso, and his friend Sandra Carrillo. Alphonso and Jesus talked about their childhoods, what it was like in that house, and you heard it. I don't need to repeat it all.

Sandra Carrillo said that she reconnected -- or

she connected with Julio because she knows Julio's brother Jesus. She knew Julio, of Julio, when he was in Adobe Mountain. They wrote letters to each other. They were pen pals when he was at Adobe Mountain. She would call him. She would write him letters.

Then she lost touch with him when they got out of Adobe Mountain and only recently, through his brother Jesus, did she reconnect with him. But she talked about her childhood as well and corroborated all this stuff about the neighborhoods.

And you heard from Alphonso that but for Julio, he would have followed in the footsteps of his brothers Martin, Lucio, Jesus, and Julio. But Julio was the one who pushed Alphonso away and said, no, Alphonso, you're not going to have my life. Pushed him away and kept him away and protected him. And but for Julio, Alphonso would be there too.

So, yes, Julio can still be a force in other people's lives, just like he was a force in Alphonso's life and how he tries to be a force in his nieces' lives telling them, don't let yourself get taken advantage of by men, watch out for that dark alley, don't lead the life that I have lived. You heard that on the phone call and the letter.

You heard from Dr. Ouaou, a neurologist -- I'm

sorry -- the neuropsychologist. He did the neuropsychological testing, also that Dr. Seward did. The one thing that was agreed upon between all of our experts and even Dr. Seward was Julio has cognitive deficits.

Even Dr. Seward admitted there was no malingering on those cognitive deficit tests. Dr. Ouaou talked about his clinical and forensic experience, the cognitive deficits, that he saw no signs of malingering when he was testing Julio and that his findings of cognitive deficits were consistent with the history of special education and failed GEDs, that Julio does have significant impairment, is consistent with the frontal lobe damage that Dr. Hyde talks about, and those things affect decision making and impulsiveness.

Then you heard from Dr. Francisco Gomez, the forensic psychologist, who has both clinical and forensic experience. Dr. Gomez, again, he was asked, you know, why didn't you write a report? Well, we didn't ask you to write a report. Dr. DeLisi didn't write a report. Dr. Whitlow didn't write a report. Not everyone writes reports. Dr. Abram and Dr. Hyde wrote reports.

Why didn't you give him tests? Because all the tests had already been given. So I reviewed the raw data from the tests. I reviewed the tests Dr. Ouaou gave him. I reviewed the tests that Dr. Seward gave him, and he said

there was no sign of malingering; that when he met with Julio, he spent his time trying to find out about Julio, not just doing tests.

He didn't need to spend 20 hours, 15, say, of which are just giving tests. He spent his time talking to Julio and evaluating Julio.

And he -- he made the comment, you know, I've got so much experience treating people with PTSD, not just theoretical forensic stuff, but actually treating them, that you know it when you see it, and with Julio it was obvious.

That, combined with the tests, the testing, the meeting with him, the reviewing the documents that were provided by all -- to all the other doctors, by talking to his family or seeing statements from his family, it was obvious that Julio had significant impairments in decision-making impulsiveness, and he was able to confirm the diagnosis Dr. Abrams and Dr. Hyde that Julio has antisocial personality disorder like almost everyone in prison, posttraumatic stress disorder, attention deficit disorder, and a history of head injuries, inhalant use, affecting the frontal lobes.

We heard how the frontal lobes are responsible for executive functioning, decision making, making good decisions, and regulating that limbic area, the back part of the brain that's more instinctual.

And if you have damage to your frontal lobes, you have all -- what shows up as white matter lesions on an MRI, it's more difficult for you to be able to control that limbic part of your brain that's fight or flight.

It's impulse. It's acting and continuing to act and not stopping. He explained why Dr. DeLisi was wrong about those adverse child events and risk factors, and he explained why Dr. Seward was wrong to say there's no antisocial personality disorder. How rare is it that everyone else, even though they're hired by the defense, finds posttraumatic stress disorder. The only one who does it is Dr. Seward.

Look at their credibility. Did Dr. Abrams seem like he was trying to hide things or trying to jockey you with the state and not wanting to admit anything? No, he volunteered stuff. He said I want to be fair and unbiased. Here's what's going on, and he admitted some things that frankly I didn't like. I didn't pay him to do, but he did it anyway because it was the right thing to do to be fair and accurate, to have integrity, as he put it. You have got to have integrity.

Dr. Hyde, the neurologist, not a neuroradiologist, an actual neurologist, came in and testified about those white matter lesions, that he prescribed an MRI, it was read by a different

neuroradiologist than Dr. Whitlow.

The state made it seem like Dr. Hyde ordered it and interpreted it himself. No. It was interpreted by a different doctor. It's right there on the MRI. I forgot the guy's name. It's in evidence. You can look at it if you want.

Dr. Hyde is not the one who said there were white matter lesions, you know, affecting the frontal lobe. It was a different neuroradiologist. But Dr. Hyde, unlike Dr. Whitlow, actually did a physical examination, and he tested him and he found those cognitive deficits and no malingering, the findings consistent with Julio's history.

He talked about all of his clinical experience. I would put up Dr. Hyde and Dr. Abrams' CVs against anyone that the state could bring in when it comes to neurology and psychiatry. And he made his diagnosis.

Dr. Abrams came in, the psychiatrist, with clinical and forensic experience and made his diagnosis that you heard about, all the same stuff.

Now he and Dr. Hyde had a slight disagreement over whether it was complex posttraumatic disorder as the WHO's ICD manual uses or posttraumatic stress disorder with Bipolar II as a component, Bipolar II meaning a behavior problem, the aggressiveness and impulsivity.

Either way, they both said it's posttraumatic

stress disorder. Dr. Abrams calls it complex posttraumatic stress disorder. Dr. Hyde calls it posttraumatic stress disorder with Bipolar II.

Dr. Abrams' report is in evidence. You can read it if you want, just like Dr. Hyde's. There's just one little quote I pulled out of it. All of this would have limited Mr. Salazar's sense of a self-agency and free will because the state only wants to talk about free will.

Mr. Salazar would have considered his survival as most important rather than his moral obligations due to his multiple traumatic experiences.

Dr. Abrams explained why Dr. Abrams is wrong. He said even Dr. Seward finds, yes, he's got this criteria of PTSD, this criteria of PTSD, this criteria of PTSD, this criteria of PTSD, but I think he's malingering and overreporting so I don't think he has PTSD.

Free will. The state's going to want to argue to you that Julio had choices and he chose to do this of his own free will and, therefore, it's not mitigating.

Did Julio really have significant choices, meaningful choices, real choices? Was his free will overcome by his mental impairments and the duress, knowing what would happen to him if he didn't do it?

You combine those two together, those are two huge mitigators. They are so important that they are not

just -- you know, fall under the phrase "mitigation" as a catchall. Those are statutory, meaning in the law, in the statute that makes you eligible for the death penalty. Also says if you have got significant impairment or you were under substantial duress, you must consider that as mitigation for why they did what they did.

Just real quickly -- these are in your instructions, what mitigations are. And we've talked about this ad nauseam in voir dire and in openings.

Mitigating circumstances are factors that are a basis for a life sentence instead of a death sentence so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history, record, or the circumstances of a defense.

Now the state wants to -- likes to argue, no, no, no, mitigation only goes to Julio. Mitigation only goes to Julio. No. The law is it also goes to the circumstances of the offense. So you can look at why this happened.

Remember when I did my very first opening statement to you. I said usually in an opening statement, you go over the who, what, where, when, and why.

But in this case, it's all on video, and the important thing is who was involved, how did all these coincidences and mistakes mesh together to allow this to happen, why did this happen, all that. And that relates to

the circumstances of the offense.

No, the prison didn't kill Lino Flores. No, the guards didn't kill Lino Flores. Julio killed Lino Flores, but he was in a situation where he could do it because of the institutional failures. And by that time, he did what he had to do as he told you.

Mitigating circumstances are not an excuse or justification, because if they were an excuse or justification he would be not guilty. And we've never claimed that he's not innocent. We've never claimed that he's innocent.

So mitigation -- as we said, we never claimed self-defense. We never claimed insanity. Those would be excuses or justification. We've argued mitigation.

You have to consider why this happened. Because the why is what -- are the factors that relate to your determination of fairness or mercy, may reduce the defendant's moral culpability.

His legal culpability is not in doubt. He's legally culpable. You found him guilty of first-degree murder.

Now the question is, what's his moral culpability? Is he to blame as much as you or I if we were in the same situation, or is it lessened because of all he's been through as a child? All of his mental problems,

physical problems, the abuse he suffered, the trauma he has seen, the situation he's been put in, his institutionalization, his prisonization.

That all lessens the moral culpability, kind of likened it to you don't punish a child the same as you punish an adult. Julio may be 41, but he's also 14 because his emotional growth is stunted.

He has worked hard these last nine years since this happened to grow. He has worked hard these last nine years to find out why did I do this? Why am I the way I am?

But when this happened, Julio, the 32 year old, he wasn't mentally 32. At best, he was 18. And you have to look at that in making your determination as well.

You have heard so much -- so many factors that in fairness or mercy call for a life sentence and reducing the moral culpability means life in prison without release instead of death.

It doesn't mean you go free. It doesn't mean you get 15 years or even 21 years. It means you're not leaving until you leave in a body bag when you die.

We're asking you to allow Julio to die a natural death instead of having a needle stuck in his arm to be put to death.

And mitigation goes on. By way of example, it's in your instructions, all the things you can consider: His

mental health or impairment, his childhood trauma, his medical issues, environmental issues, the neighborhood he grew up in, what happened to his mother, the cultural issues and gangs, the institutional failures and management, the circumstances of the crime, his relationship that he has now and had before with his family and loved ones. Proportionality and sentencing basically is Lino Flores killed in prison. He was still on that prison yard. His age and drugs.

So, no, Julio wasn't on drugs at the time he killed him. That's not what we're saying. We're saying his inhalant use, his drug use, affected his brain. We're not claiming -- and that brain problem continued, and he had that the day of the killing, that brain problem, this frontal lobe problems. We're not saying he was drunk or on drugs and that's why he killed him, just to be clear.

Also, you are told, you know what, all the stuff that we've brought up, that's great, but you also have the power, because you are the ones with the power, individually, each of you -- remember this isn't a group decision on what's mitigation. It's an individual decision, and then individually you come together to decide do we all agree on life or death?

But it's an individual decision of this is what I feel is mitigating. This is what I feel is enough

mitigation to call for leniency or not.

It can be anything else, stuff we didn't bring up. Maybe when his brother Jesus came in and testified and it was the first time Julio had been in a room with him without bars, without glass between them, whatever, since 2001. Maybe you saw the way Julio was crying, or his statement this morning, how powerful was that? That's mitigation, what he told you.

Maybe it's the connection he has with his niece. Maybe it's the connection he has with pen pals. It can be anything. It can be anything that you, in your heart, find as a reason to show him leniency and mercy.

So the statutory -- like I said, it's a statutory mitigating circumstance if the defendant's capacity to appreciate the wrongfulness of his conduct or conform his conduct to the crimes of the law was significantly impaired.

If it was totally impaired, he would be not guilty. If it's significantly impaired, he's guilty, but then you have to decide between life or death.

So it's not a defense to prosecution, and we have to prove this preponderance of the evidence, more likely than not -- 51 percent-49 percent when it comes to mitigation.

You are given the definition of significantly impaired. Did he suffer from mental illness? Does anyone

really believe he doesn't have a mental illness? Does he have a personality disorder?

Well, okay, even Dr. Seward says he has a personality disorder that affects impulsiveness and decision making and thought processes. Did he have substance abuse as a kid? Yes. Not at or near the time of the offense, but that substance abuse affected his brain and he had that brain problem at the time of the offense, and that substantially reduced his ability to appreciate the wrongfulness of the conduct or conforming his conduct to the requirements of the law.

Basically what does that mean? That doesn't mean that he could choose right from wrong. Yes, he can choose right from wrong in the proper situation. But in that situation, that rec yard, that day with Lino Flores, he could not make the proper decision, not when you combine it with what I'm going to talk about next, the duress.

So, no, he couldn't conform his conduct to the requirement of the law. He could not act. He could not not kill. He had to. And his brain told him he had to, his paranoia, and his mental illness, and his fear, and his knowing what happens, and his thoughts and feelings of anyone who has been in prison for 18 years at that point, or rapists.

And then duress. It is a statutory mitigating

factor that the defendant was under unusual or substantial duress although not so much to constitute a defense. You can't raise duress for murder. You can't say someone held a gun to my head and said, you kill him or I kill you.

The law says in that situation, you have to let yourself be killed. So you can't raise duress as a defense meaning you're not guilty. But the law says duress is a mitigator in determining whether life or death. Yes, you're guilty but it must be considered when deciding life or death.

So, no, he was not illegally imprisoned. There was no legal imprisonment for an illegal purpose. No. Over the threats of bodily or other harm or other means amounting to or tending to coerce the will of another, and actually inducing him or her to do and act contrary to his free will. There's duress here.

You've heard -- even the state's witnesses admitted, yeah, there's duress. He had to do what he had to do. He had no choice. He had to act. He couldn't not act. Even they admitted there is duress, and that duress overcame his free will. At that point he could not say, I know it's wrong to kill so I'm not going to kill.

To him, it overcame his free will because he knew he had no real choice. He could have not killed Lino Flores that day and had a target on his back and probably would

have been killed in prison at some point, or he could face you and let you decide whether he gets life or death.

Yes, he decided life or death for Lino Flores, but Lino Flores had done the same to others. Lino Flores knew what he was getting into. You heard from Mr. Boggs. There was no way that Lino Flores wasn't getting into that rec pen with Julio Salazar. That would have been a PC move, he said. Absolutely Lino Flores was going to get in that rec yard with Julio Salazar.

Other mitigation. The remorse for his cousin's death. He told you how he was haunted by the killing of Lino Flores. He loves his family and they love him. These are nonstatutory mitigators.

He didn't want them getting involved. He's hurt -- he knows he's hurt them enough already. So, yeah, he complained about restitution. He didn't complain about him having to pay restitution. He complained about his family gets together 20, 30 bucks to send him so he can buy shampoo and soap and deodorant, toothpaste, and maybe some overpriced snacks from the commissary, from the prison store, but he doesn't feel like it's right that if they get $20 together, $5 of that, or whatever, goes to his restitution.

It's for him to pay restitution. It's for him to pay for the crimes he did, not for his mom or his brother or

his niece. That was his complaint, not that he doesn't owe restitution, not that he shouldn't pay restitution, that he should be held responsible.

I already mentioned before the force he was for his younger brother Alphonso to be the exception. His mother died while he was in prison. He didn't even get to go to her funeral.

He's spent a lifetime in prison since he's been 14. Since he was 14, he's been out of custody for three months. We're asking you to let him spend the rest of his life in prison.

Does that sound too much to ask? I guess it comes down to are we a better society than the prisoners?

Julio pled guilty to his prior offenses. He offered to plead guilty in this. The state said, no, you're evil, we're going to kill you.

This wasn't self-defense. This was self-preservation. That's what it was. He's in that rec enclosure, and he knows if he doesn't act, whatever he doesn't do is going to be done to him.

His 32 years at that time of life were all about self-preservation, doing what you need to do to live another day.

So he kills Lino Flores and he dances. Why does he dance? Because he's a survivor. He knows he's going to

survive another day. He knows he did what he had to do and he's going to survive another day and go back to his cell. And, yes, he knows he's going to be put on trial for it. He knows he's going to be held responsible for it.

Life in prison without the possibility of release is an appropriate, lenient, merciless sentence in this case when you look at the totality of everything that you have heard over the last six weeks.

The state is going to talk to you and then I'll talk to you again, respond to the things they say about free will and how he made a choice, and how he did this and he just wanted to do it and he did it.

I'm asking you to look and listen and consider everything you heard and be better than members of Mexican Mafia or rapists and killers and show that as a society we're capable of forgiveness.

We're capable of understanding others who have suffered. We don't have to do to Julio what he and Lino Flores have done to others. Thank you.

THE COURT: Thank you, Mr. Tallan.

Ladies and gentlemen of the jury, we are breaking for lunch a little bit later than usual. So we'll come back a little bit later. Please be back in the jury assembly room at 1:30 and we'll get started as soon thereafter as possible. Please remember the admonition.

Again, all those same restrictions apply. Also, again, be mindful that even amongst yourselves you may not discuss this case until the jury retires to deliberate after we're finished with the process today. So, with that, have a good lunch and jury assembly room at 1:30.

(Off-the-record discussion.)

THE COURT: Thank you, Polo.

Folks, just to be aware, apparently there's a plumbing problem in Florence. The water system is out. So I'm not sure exactly how that's affecting this building, but this building is probably out of commission. I'm not sure how that's going to affect restaurants and so on in town. But just to be aware of that, that apparently there's a waterline problem. So have a good lunch.

THE BAILIFF: All rise for the jury.

(The following proceedings took place out of the presence of the jury.)

THE COURT: The jury has left the courtroom. Mr. Salazar, the attorneys are still here.

Counsel, is everybody comfortable with putting a few things on the record or do we need to stop right now and do it later?

MR. TALLAN: Fine, Your Honor.

THE COURT: Okay.

MR. GODDARD: Okay. As long as we're --

THE COURT: Quick. Okay. We had a quick sidebar after Mr. Salazar's allocution and just wanted to confirm that the state was not asking to reopen before I got into reading the final jury instructions, and Mr. Goddard confirmed that the state was not making such a motion.

Mr. Goddard, concur?

MR. GODDARD: Yes.

THE COURT: And, Mr. Tallan, concur that that was the sidebar?

MR. TALLAN: Yes, Your Honor.

THE COURT: Then we had a further sidebar on -- during Mr. Tallan's closing when Mr. Tallan made a reference to Mr. Salazar not being on trial for killing his cousin.

The Court overruled the objection. I think it's an issue of semantics. In my view, he's not charged with killing the cousin and is not -- and by being convicted is not being sentenced for killing the cousin. He's on trial for the other. I know it's a semantics issue.

Obviously, the killing of the cousin is directly relevant to the issue that the jury is facing, but the Court overruled the objection because I thought it was a fair use of language by Mr. Tallan, just as it would be a fair use of language by the state if they wish to characterize what -- how Mr. Salazar is on trial and the decision that the jury is making as well.

Any records to make on that sidebar, Mr. Goddard?

MR. GODDARD: Just that my -- the way I interpreted the statement was that Mr. Tallan was asking the jury to disregard the murder of the cousin as a non-issue and I felt that that was confusing for the jury. If I jumped the gun, I apologize. I try not to --

THE COURT: There is nothing to apologize for, and I do note that Mr. Tallan, on his own initiative, clarified also --

MR. GODDARD: He did.

THE COURT: -- the trial issue and that it was obviously still an aggravator.

Mr. Tallan, any other record to make?

MR. TALLAN: No, Your Honor.

THE COURT: Okay. Gentlemen, any other records to make before we adjourn for lunch, Mr. Goddard?

MR. GODDARD: Just that by the -- I don't know what that clock is called, the record clock thing.

THE COURT: Right. It's for the AJACS recording.

MR. GODDARD: AJACS, that's right. At 11:13, Mr. Tallan said that future danger is a consideration, that the defendant can be managed safely. So I believe future danger is now an issue and I intend to argue it.

THE COURT: Yeah. I wrote down -- my quote is, quote, "We never said that there's no future dangerousness.

He can be guarded properly. He's never getting out," end quote. That was my notation.

MR. GODDARD: And there was a quote about management, that he could be managed.

THE COURT: That's right.

MR. GODDARD: So I intend to argue future danger it's now an issue.

THE COURT: Mr. Tallan, anything on that?

MR. TALLAN: I disagree, Your Honor. I said that we are not putting future dangerousness at issue. I said we are not claiming a lack of future dangerousness.

If I said he's not -- that there's no future dangerousness, then it would open the door. I said we're not arguing a lack of future dangerousness.

THE COURT: I don't think so. My -- now, I'm not the best at writing down exact. I put it in quotation marks and I know I did miss that piece. My note was, what was said was, we never said there's no future dangerousness.

MR. GODDARD: Yes.

MR. TALLAN: That's the same as saying -- okay. That's the same as saying we're not arguing a lack of -- we never put lack of future dangerousness as a mitigator.

We never said that he would -- we didn't bring in any experts to say that there's no future dangerousness. In fact, most experts that came in -- state's experts all said

that he's a future danger. He's --

MR. GODDARD: And then he said he could be managed. Future danger is now an issue I intend to argue.

THE COURT: Mr. Tallan?

MR. TALLAN: I object, Your Honor. I did not mean to put in future dangerousness. These are arguments. They are told it's not the evidence.

We have very carefully avoided lack of future dangerousness, and I never said that there was a lack -- I never said -- what I specifically said was we are not saying there's no future dangerousness.

How does -- I don't see how that can open the door then to being the same as there is no future dangerousness, my saying we're not arguing that. We're not saying that.

That would be the same kind -- you know, damned if I do, damned if I don't.

THE COURT: Judy, can you find that over the lunch hour? If you need an extra few minutes before you get back, do so. We'll return to that. I want to look at the specific wording, but I think I have it right.

Okay. Counsel, anything else before we adjourn?

Mr. Goddard?

MR. GODDARD: Other than I don't know what the water situation means for our schedule but --

THE COURT: I'm assuming that we're still on track. I mean, the -- if there's a problem the jurors aren't able to eat then, I don't know, maybe we have to send somebody to Coolidge to go get something. I don't know.

MR. GODDARD: I don't know if there's toilets. That's what I was concerned about.

THE BAILIFF: It's going to affect the restrooms.

THE COURT: May get stinky around here but we've got to finish up.

MR. GODDARD: Okay. That's all I needed to hear.

MR. WILKISON: What time are we coming back?

MR. TALLAN: 1:30.

THE COURT: I asked the jury to get back at 1:30 and we'll start just as soon thereafter as we can gather everybody.

All right. Thanks, guys.

(Lunch Recess.)

THE COURT: All right. We are back on CR201502140. The Court notes the presence of Mr. Salazar, civilian attire, no visible restraints. Both of his counsel, Mr. Tallan and Mr. Wilkison. And for the state, Deputy County Attorneys Goddard and Johnson.

Counsel, the water being down in Florence apparently has made it difficult for jurors to find lunch so they came back here. The clerk's office was able to gather

snacks and some refreshments.

Court administration has been working on it and has finally gotten some sandwiches and soda also. So the jurors, I believe, are still eating.

THE BAILIFF: Yes.

THE COURT: So I guess part of this becomes a question of all of you. If you guys just rushed back here, if you were able to eat or --

MR. TALLAN: Yes. The restaurants were open.

THE COURT: If we need to find anything for you guys or anything.

MR. TALLAN: No. We called. L&B was open. We went to River Bottom. It was open. So apparently the report of the restaurants all being closed was a premature obituary.

THE BAILIFF: But McDonald's and Taco Bell, these smaller ones, they were all shut down.

THE COURT: I guess some are shut down and some are not. Well, I mean, court admin found sandwiches somewhere. Anyway, the point is the jurors are eating.

So, counsel, if you are ready to proceed, just a couple of other housekeeping matters. Just a reminder, the laptop that the jury will use to inspect any videos and so on, I want -- it will be the county attorney laptop and defense needs to examine it and give an affirmative approval

that it is clean, clear, and ready for the jury.

And, Mr. Wilkison, I take it you will take on that responsibility?

MR. WILKISON: I will, Judge, yes.

THE COURT: Again, the laptop is not to go in that direction until Mr. Wilkison advises Sheri or Polo.

Additionally, as before, no exhibits are going to go to the jury until both sides review them. And, again, whatever you take to the jury is the agreed and stipulated evidence body for them to be evaluating in deliberations.

Then, just finally, PowerPoints that are used in closing, please make sure you burn them on a disk or a flash drive so that Sheri can mark them and make them part of the permanent record.

Okay. To continue our conversation on the issue of the future dangerousness oral motion by the state, I have received an excerpt from the court reporter.

Counsel, have you all received that?

MR. GODDARD: Yes.

MR. TALLAN: Yes, Your Honor.

MR. WILKISON: Yes.

THE COURT: Okay. Does anyone wish to be heard further on this?

MR. GODDARD: Judge, I would just add there are a couple of different areas where the defense put future

dangerousness in issue, saying that the defendant was going to age out, that he was slowing down.

Then they used the words -- and I'm going to get it here in a second -- but he could be controlled and he can -- I forgot what the other one was. I'm pulling it up right now, but the point is that they have made a future dangerousness argument, and I want to be able to address that in my close.

THE COURT: Mr. Tallan, anything else?

MR. TALLAN: I disagree, Your Honor. I was referring -- I was referring to evidence the witnesses heard. I'm sorry. Referring to evidence the jury heard from the witnesses. There was testimony from those witnesses about aging out and/or questions asked by the state to the doctors about aging out.

What I said was that we are not arguing a lack of future dangerousness. That does not open the door to arguing future dangerousness. I would cite Cruz versus Arizona 598 U.S. 17, and that would put us in the same type of catch-22 situation that Justice Sotomayor referred to when Arizona argued when it comes to future dangerousness you can't, you know, that -- when Arizona said it's not a new law because we just weren't following it and said, well, you know, it's a catch-22.

And same kind of thing. How can saying we're not

arguing a lack of future dangerousness mean we're arguing lack of future dangerousness? So I would object on the Fifth, Sixth, Eighth Amendments and Fourteenth Amendment to the United States Constitution, as well as -- pull it up. Hang on. Sorry.

What happened to it? The Articles of the Arizona Constitution, I was going to cite the particular articles. I had them pulled up. I don't see them right now, but it's like the Third, the Eighth, the Fifth Articles of the Arizona Constitution.

THE COURT: Mr. Goddard, any final --

MR. GODDARD: Well, I can't bring up anything right now. Hold on.

MR. TALLAN: Oh, here. The Third, the Fourth, the Eighth, Tenth, and the Fifteenth sections in the Articles of the Arizona Constitution.

THE COURT: Thank you.

MR. GODDARD: Well, I can't bring up the quote, Judge, but the sum and substance of the -- because my stupid computer, which is really helpful right now. This is so frustrating.

THE COURT: It's hooked up to the water main.

MR. GODDARD: No kidding. Yeah, I'm not going to. Whatever the quote is, put in future dangerousness.

THE COURT: Do you need to take a minute to

reboot?

MR. GODDARD: No. I would rather just be angry. Thank you though, Judge. I would rather be angry at an inanimate object and I'm not restarting it.

So whatever the quote is, I think it put in future dangerousness. He could be safely or adequate -- I forgot what the quote was but protected and then something else, but I just don't have it in front of me.

THE COURT: Well, I have my printout. Would you like to --

MR. GODDARD: Yeah. That's --

THE COURT: While you are looking at it, I'm going to have the clerk mark this just so it's clear what it is that we are looking at in case the final version of the transcript is in any way different.

All right. So that is marked but not admitted.

What is the number going to be?

THE CLERK: Exhibit 397.

THE COURT: So the excerpt that we have been talking about is marked for identification purposes only as 397. Not admitted.

(Exhibit 397 marked for identification.)

MR. GODDARD: So I apologize. I was trying to bring it up and I couldn't.

But, yeah. So remember Julio was 13 when this --

or 32 when this happened. Now he's 41. The older you get, you slow down. You mellow out. We never claimed that Julio Salazar is -- there's no future dangerousness with Julio Salazar.

I think that in and of itself puts it at issue. We get to rebut that. I never said let him out. He can be controlled. He can be guarded properly.

No, he can't, and that's the evidence, and I'm going to make an evidence-based argument that rebuts that.

THE COURT: All right.

MR. TALLAN: The statement's intent was we never claimed that there's no future dangerousness with Julio Salazar.

I stumbled over my words and said Julio Salazar is -- but what it was was we never claimed that there's no future dangerousness with Julio Salazar.

THE COURT: Okay. All right. The bottom line is while it may have been a slip of the tongue, the simple fact is the statement that's been made is in front of the jury, is before it. It's only fair that the state have an opportunity to respond to the specific statement that was made.

I will tell you though, Mr. Goddard, I would encourage restraint and caution in how far you go with this. I do think it was -- with all respect, I think it was kind

of getting carried away in the moment during the closing.

All right. Is there anything else before we get the jury back in here if they are done eating?

Mr. Tallan?

MR. TALLAN: No, Your Honor.

THE COURT: Okay. And Mr. Goddard?

MR. GODDARD: No, I just need a minute.

THE COURT: You need a minute to get set up?

MR. GODDARD: No. I just need a minute to step out and come back.

(Brief Recess.)

(The following proceedings took place in the presence of the jury.)

THE COURT: Folks, please have a seat. Okay. We're back on the record in CR201502140. We have got parties, counsel, and all 16 jurors back.

I know that lunch in Florence was even a little more challenging than I was thinking. I appreciate everyone's patience in dealing with the situation. I know that the jury department worked on getting some food. Hopefully between that and sandwiches that were delivered, hopefully everybody is okay.

Anybody -- anybody, I guess, from a comfort standpoint, do we need to do anything else? Everybody have refreshments and adequate food to eat and stuff like that?

Like I said, so a long-winded way of saying, is everybody ready to proceed? All right. I'm seeing heads-up and thumbs up.

So with that, we had left off with Mr. Tallan completing his initial close.

Now, Mr. Goddard, if you wish to.

MR. GODDARD: Twenty-eight days and all you got was some stupid Doritos. However it works. All right.

This has been a long process and I do not envy you all mostly because you have to sit in front of lawyers and just take it.

And I'm not going to sit here and try to insult your intelligence, and I'm not saying anyone here is, but we've got to work through this because these are difficult instructions. These are difficult propositions, and we just gotta work through them.

I am going to try to do my best not to rehash the 28, whatever it was, days that you have done. I know you all have taken this seriously. You have taken notes. You have paid attention. You have looked. And you swore an oath in this case. And, my God, when you get out of this courtroom, oaths don't mean that much anymore.

And there's just things that we just kind of throw out there. What's the line in A Few Good Men? It's a punchline, but oaths matter here. They matter in this case.

They matter for these people.

And we banked on it, both sides. Every single witness, you heard how much money has been invested, and money is a cheap measure but it is a measure.

We've taken time out of your lives. Some of you had vacations that were planned and you were worried about your wife getting angry with you, and here you are still on the jury. We acknowledge all that.

But the oath is serious. This case is serious. At the start of this case, I asked you, and Mr. Johnson asked you, you are going to resolve a question and you are now here. We are here to answer it.

What is the appropriate punishment for this defendant for this crime? Only now you have more to it than when we first asked that question.

You have got the evidence in this case, all of it, every little bit. You have got the warts and you have got the beautiful things. You have got the powerful evidence. You have got the mundane, and you know that we can ask that question just a little bit differently now.

What's the appropriate punishment for a predatory killer who has tried his level best to kill five separate human beings, two in the car, Sergeant Flores, Lino Flores, and Paulo Reyes.

What's the appropriate punishment for a predatory

killer who has killed on the outside and he's killed on the inside?

He killed as an adult. He killed as a young man. He killed in maximum custody. He killed in no custody. He held a knife up to the throat of a four year old and stabbed his brother. He shot at a dad who was just trying to protect his son and just get his bike back.

You know, they talk about the community that he grow in -- that he grew up in. They didn't talk about the victims that grew up in that community. That bike meant something. When you don't have any money, that bike means something. It's not you just go down to Wal-Mart or whatever and you just get a new bike. You're done. That's it.

They didn't talk about that one, did they? These are real victims. They lie in the wake of one man. Consistently and without fail, when the opportunity presents it, he takes it. What's the appropriate punishment for that man again and again and again?

You know, you have been given instructions. And if I have done my job today, all I hope to do is not to rehash all the evidence, like I said, but to send you out making sense of these instructions because these are different. They are different from anything that you have ever done in this trial.

It's the first time -- and I know you all look at these closely, which is why I really want to focus on the process and the assessment of these -- that this -- these instructions give you. There's a lot of dense language in it and we're going to go through it all.

Like I said, my job is to send you out into that room and hopefully give you some -- a process that you can work through this because you are making a legal decision now. This is punishment. This is a sentencing hearing, as the judge said.

You will see for the first time, it's on page four, you are given an assessment, a mitigation assessment, in the sentence in burden of proof.

It's an assessment. It's a process. And that's different. You are going to go back into this jury room and you are going to begin to assess. For my engineer types, this is the system of how you are going to work through this evidence.

Maybe it's numerical on a scale of one to ten. Maybe it's something else that you come up with. It's entirely up to you but this is the first time that the Court has instructed you on a law and sent you off on your way. You're going to kind of create a way to process this evidence.

So when we're looking at that, that's what I'm

hoping that you take away with what I'm talking about today.

In -- what you are doing is you are assessing the mitigation. That's at the top of page four on your instructions.

And when you see -- when you look at the mitigation in this case, there's going to be an over-arching theme, and it was articulated and expanded on by Dr. DeLisi. He called it the ecological fallacy, and what the hope -- and when you look at all -- virtually all of the mitigation -- not all, but most of the mitigation, we'll systematize this, but you are going to see that it's the ecological fallacy nonstop.

The hope that you look at the group and don't pay attention to the man, that man. You know -- and Amy Nguyen and Dr. Gomez on the second day was a perfect example of that. Boy, they backed off of Amy Nguyen because all she did is she comes in and she talks about lead poisoning and single motherhood and all these bad things, when she could have just turned and asked or tested, do you have lead poisoning, Julio Salazar?

Oh, and I couldn't help but notice that you're in a two-parent home. Now there may be problems with that home. They could have personalized it. They did a little bit, but the hope is, well, it's a bad place, it's a bad neighborhood. So let's not look at Julio himself.

Dr. Gomez did the same thing. These are just examples. He cites a 2004 DOJ study four years after Julio left that talked about all sorts of awful things.

But when you look at the records of Julio Salazar himself, you find out he was availing himself of counseling. He wasn't a victim of sexual assault. None of that applied. What it turns out is he was leader in juvenile as a gang member. He was associated with people that were all gang members.

It's the hope that you lose the details in the group and don't focus on the man. You are not here to sentence a system. You are here to sentence a man, one man, Julio Salazar, for this crime.

You are taking that in light of -- and you are going to see all these words in light of what he did, murdering and -- or, I'm sorry -- committing this murder in prison, murdering Paulo Reyes -- or killing Paulo Reyes and murdering Lino Flores, and the way that he did that.

You are comparing what you saw as mitigation for him, not for the group, and you are doing that in light of those three major factors, and we're going to talk about those.

It's -- if you want to find out what kind of socker player I was in college, you wouldn't go and ask my mom. I got news for you, my mom thought I was amazing, and

it doesn't get much better when you talk to my dad. Amazing. There was only player I could focus on.

I played 19 minutes in four years. I did what Mr. Johnson is doing right now. Great view. You wouldn't just ask my mom. She thought it was amazing. She would do anything for me.

How about coaches? How about players? How about my stats? They didn't do that. I'm not saying that the doctors and the experts are bad and they are not all these things.

They didn't look at anything. They looked at a narrow portion of Julio Salazar and only the part that wanted to be seen.

And Dr. Seward has the temerity to say, well, maybe not. But what does he do? He records in two different ways so that there's not a failure. He hands -- he hands over all the data. He's not constrained in anything, and he asks about the murder. Of course, they came up -- Gomez and Miller and everyone came up with a certain conclusion.

They had a quarter of the story. They didn't even ask about why he's there. Dr. Gomez set on in 50 California Mexican Mafia cases, 5-0, and never once was asked about Mexican Mafia? Why?

Got lost in the group. Don't look at the man.

Over and over again, you're going to see the ecological fallacies.

All right. Let's talk about the process and the assessment of this case, and you only have to read this a couple times. And I am not saying back off of this or summarize it or anything like that, but you see real quickly that this was made by lawyers who love to put in dense language.

You know, we start off with the duties of the jurors and we kind of end with what you're really deciding. Then maybe in a little bit a bunch of how to do this.

So I've tried -- and if this fails, I'm sorry. Then just defer to your instructions, but I have tried to organize this a little bit, and you're going to see some whiplash on going back and forth on the instructions, but I beg you to follow along if you can.

Or, at a minimum, when you go back there and just work through this, diagram it if you have to. I'll have a diagram for you, a process. I don't care if you use what I do, do whatsoever you guys need to do. You got a tough job to organize this chaos, but organize it.

Get a system and work it through. You are going to see that that's exactly what these instructions talk about.

So I've tried to order it a little bit

differently and start with the idea of what are we really deciding here? In this phase you are going to see -- and I tried to give the page references. In this phase, we're trying to decide ultimately is the mitigation sufficiently substantial to call for leniency? And leniency in this phase is defined as not death. Okay.

So there's sort of these basic ones. The big one is duress. I'm not saying it's neither here nor there. There's no hierarchy here. There's no order or structure. It's not a first or second, but this is where I think a good -- I mean, it's your notes that matter but this is where a lot of time was spent.

The second one is significant impairment, page six and page seven. Then there's kind of this sort of -- I don't know. I'll call it a catchall. I can be corrected obviously. But these are sort of -- I think you are going to see less time was spent on these.

So this is what we're deciding. This is the mitigation. And, yes, there's other mitigation that you can find on your own, but this is what we're dealing with in black and white.

So what are we here to decide? Okay. So the big question now is how do we decide it? This is where the -- this is where the jury instructions begin to lay out for you the system or the assessment process, to use their words,

that the law wants you to go through.

The first one is: Are y'all talking together? It's the only time you see duty. The only time the law tells you that you have a duty. There's one other reference to the judge having a duty. The only time the law mentions duty is for you all to consult with each other.

It's right there on page three. Anyone who tells you not to deliberate and consult with each other -- and you're going to see how that makes sense when you look at this assessment process.

They are asking you not to follow the law and to break your oath, and you must reject that. You are obligated to the law. That is the important oath that you took.

Okay. So you have a duty to discuss the case with one another and to deliberate in order to reach -- an effort to reach a just verdict.

Life or death, whatever it is, but make it just. And if it's justice, hold your head high, but it must be just, and the process will get you to there because the law will tell you how it is to get to a just verdict in this case.

Okay. So the first question you ask, whatever you think might be mitigation, whatever you're going to test, whatever you're going to run through this process, is

it evidence? Is it even evidence that we're considering? If it's not, I suggest it might be emotion, and you are going to see we are to apply the law without passion or prejudice and without the sway of emotion.

So is it evidence? All right. Well, that's easy enough. Testimony, exhibits. There. And I won't do it. There. Those are the only two places that evidence comes from, the witness stand, and over at the evidence table. That's it. Anything else is not evidence, not to be considered.

Again, the law stresses it again on page two. Mitigating circumstances may be found from any evidence presented. It has to be evidence.

All right. Going back to page three, are you considering the evidence impartially? Lawyers love to use charged words but impartially. Are you discussing the evidence and are you considering the evidence impartially? So fairly. And that might mean something that you're -- normally I'm not inclined to believe it, but I'm willing to at least sit down and consider it fairly.

Now do you see why it kind of matters for you guys to discuss this? Why it's a duty that the law places on you, the only duty it places on you?

You are going to be talking through this and saying, all right, well, is this evidence? It's a back and

forth. Where did you get that? Oh, yeah, you're right. Here in my notes, that's right. Okay. Let's move along, and then you work through it.

Your next step -- and it's on page two. Is the evidence credible? Now every side is going to emphasize different things, but one of the things I want you to look at is the opportunity and ability to observe.

Now this kind of matters on what kind of witness it is. I mean, when we're talking about the murder itself, it's the video. But when we're talking about mitigation and the doctors, did they spend 20 hours or two hours?

Someone in their field, what do they normally do? Do they do ten hours with four pages? Do they do 3.7 hours? And how did they collect the evidence? How did they collect the statements? Did they just jot it down and there's a whole bunch of stuff in their notes, or did they record everything and say, here you go? Right or wrong, here it all is, everything.

You get to challenge that according to this law and say two hours is not enough, not for someone in your field. Why didn't you test? Why didn't you ask? You're going to see asking about the crime is in the elements themselves on something approved. We'll get there.

But that's -- is the -- is it evidence? Is it credible? That's going to have a bearing on credibility and

weight. So how much umph are you going to give this evidence?

And we're going to compare it. I'm telling you, I'm not trying to throw all this at you, but I'm just showing you how this is a fluid series of systems and the importance of developing a process for this.

Okay. Is it credible? Is it even mitigating? So if it's evidence and it's credible and you're discussing it, the next question you have to ask yourself is: Is it even mitigating?

So this is when you run it through so long as it relates -- and Mr. Tallan jumped on that, absolutely, circumstances of the offense. That matters.

Every word in these instructions matter, but every word in these instructions matter.

Okay. So is it even mitigating? You can consider all this stuff for a life or death sentence so long as it relates for it to be mitigation. Okay. And don't worry, I'll have a checklist at the end, just so you know.

All right. Is it even mitigating? If it's evidence, it's credible, is it mitigating? If the answer is no, move on to the next thing, not for this phase.

Did they prove it? This is on page four. The defendant has the burden of proof. We talked about this in voir dire, and I believe Mr. Tallan addressed it, and the

Court certainly gave it to you.

But did they even prove it? It must convince you, all of you. Exercising your duty to discuss and deliberate. Did they prove it? Not beyond a reasonable doubt, no one is saying that. More likely than not, did they prove it?

For a quick digression, this is a time when we can brush up on the instruction on what lawyers say isn't evidence.

I am going to give you an example. Dr. Seward was on the stand. He was being asked questions by Mr. Tallan, and I had pointed out in my direct about Julio slipping that the victim had a sister.

And Mr. Tallan asked, well, how do you know that the defense didn't give it to him? Now I'm not saying this was his intent, but a reasonable person just being a human being might think, oh, well, I guess the defense gave it to him.

Not proven. Not a single witness stepped forward, not an investigator who is in the back of the courtroom, not a member of the defense staff, no pleadings, no motions, nothing, zero --

MR. TALLAN: Objection, Your Honor.

MR. GODDARD: -- zilch was put on to the stand.

THE COURT: Mr. Goddard, come forward.

(An off-the-record discussion was held at the bench out of the hearing of the jury and the court reporter.)

MR. GODDARD: Evidence is what is said in the witness stand and received as a document. It's not just what is suggested. It's not innuendo. It's not what lawyers say. It is there or there, and that's it. That is the law you have been given.

So was it proven? Not suggested, not innuendo. Did it happen here or does it come from there? Was it proven? Hold us to our burden every single time, phase one and two.

You have to hold them to theirs, and you have to ask yourself whatever is mitigating, was it proven?

And this is when we start getting in the thick language of the instructions. What is the quality or value of the mitigation? You are going to always see these two together, quality or value.

At least one, I think maybe two, they're going to mention quality and strength. That's going to be kind of a separate concept, but what is the quality or value of the mitigation?

This is when I -- you know, I said that we're starting to put it up against the aggravation. You're going to see this in a second, but this is where we are starting

to say, okay, if it's mitigating and they have proven it, how does this compare in quality or value in light of -- the words that the instruction will use -- of the aggravation, that this happened in prison, that he has been convicted of a prior serious offense, and the heinous or depravity of the Lino Flores murder. The heinousness.

Okay. So now you are starting to qualitatively examine the evidence. That's why I'm saying it requires -- it's dense and you gotta go through it, but you are asking yourself, what is the quality or value of the mitigation?

The question that you can ask -- this is on page three, and this is where we see strength -- the quality and strength of the mitigation. Is there a connection to the murder? Okay. He -- let's -- I'm not using this defendant but some random -- random defendant for just purposes of an analogy.

He loves owls is random as I can get. Okay. Great. He loves owls. How does that affect the murder? It doesn't. If he's charged with the murder of an owl, I guess that matters. There's your connection.

But the point is, you can ask -- it doesn't have to be a connection. You can ask that and that is part of when you are in this quality or value and how much am I going to give it? It's this on page three.

You are not required to find a connection, but

any connection or lack of connection may impact the quality and strength. So you're taking this evidence and you're systematizing it, and you are looking at it, working with it, discussing it. If there's no connection, it's up for you to decide no strength.

Just to get that little jab in, on pages four and five, they had to do it, and they threw in the totality. So you are looking at this evidence. You are deciding if it's mitigation. You are discussing it with each other. You are asking was it proven, proven as mitigation, and you're trying to decide, okay, well, what's the quality or the value of this compared to the aggravating factors in this case, and you're doing that in a totality.

So on page four, they say the total; on page five, the totality of the mitigating factors. Now it's starting to hint at what your end result is. Is it sufficiently substantial? Is it enough? Is it enough of a punch to get you to leniency?

So you are looking at this globally. You're discussing this, and you're trying to decide is it proven? Okay. So this is how you assess the quality and strength of the aggravating and mitigating factors.

So now moving along, pages four and two. Page two gives you definition of leniency, which means a sentence less than death, which in this case only means life without

parole. So no mystery there.

They use the words that they use. So you are looking at the totality, and in light of the aggravating -- and there's that in the light of -- in light of.

This is where it's an individual determination, but that is not -- that is not inconsistent with group discussion, your only duty. Hey, this is what I thought. Let's discuss that. Let's run it through our process.

Do you see how this is -- why they label this an assessment, that they want you working through -- systematically through the instructions and through the evidence.

So in light of -- so we don't forget phase two and phase one. It is the strength by which we compare. Hope that makes sense. You guys will figure it out.

Getting to the end of the instructions. Is your decision reasoned and moral? First time we introduce the concept of morality. We're going to talk about what reasoned means, but certainly reasoned means evidence based, without emotion, and that's consistent with what page one tells you about you are not to be swayed by emotion. Is it reasoned and moral? And we'll talk about the morality.

If I just would have known what was coming next, I could have saved my breath.

So reasoned. Page one, the evidence -- based on

the evidence presented, the evidence you shall consider is the testimony and exhibits. It's evidence based. It's an evidence-based decision and devoid of emotion.

You are like doctors walking into the surgery room. You are not going to recoil at the sight of blood. You are going to apply this with a cold, logical, and reasoned approach. That's what the law says. Not because you may hate the victim and scream rapist, rapist, rapist, rapist, rapist at every opportunity.

It's more than that. And not because the defendant is evil. It's more than that. It's a process.

The decision is moral if you come to a just decision. Is it justice? When you stand up and you look at what you have done and what the appropriate punishment is, can you say it was justice? Can you say it to all of you? Can you uphold your duty and say, yes, this is justice.

If you can, open that door proudly. Sit down here proudly. Answer this was your verdict proudly. Let justice be done and let the chips fall.

You are going to have a duty to consult with each other to reach a just verdict. It's there in the instructions.

All right. For my engineering types that need a checklist, design it however you want. This is me humbly submitting this to you as a checklist. For my visual types,

this is as good as it gets for visuals for me.

Here's -- this is your assessment. You take your evidence and you kind of just walk through the steps turning to the pages in the instructions as your guide, and then coming out to an end.

Then you just -- every single bit of evidence that you want to run through, run it through your assessment, run it through your process.

The instructions will be less daunting if you organize it this way. But let's face it, you guys are who you are. You're experts in the criminal justice system now. You are going to do whatever you need to do.

This is just a humble suggestion. That's all. But I think when you look at the instructions, you can see that this is what they're asking you to do.

So before we talk about unusual and substantial duress, significant impairment, and the other factors that were presented, let's talk a little bit about that phrase "in light of" and just kind of remind you about the second phase.

There are three aggravating circumstances in this case. The first one is that this occurred in prison, and it means all of prison. That the defendant killed in prison is a sufficient reason enough for him to get the death penalty.

Why? It's not just a throw away, well, it

happened in prison. The law asks you to consider it and to consider itself separately and to hold the state to the burden of beyond a reasonable doubt, and I get that we've already rehashed this. We haven't talked about the why.

It's because of everyone who has ever walked into prison constitutes prison. That means the CO, the nurses, the civilians, the counselors, the teachers. And, yes, it means the inmates. Even the sex offenders.

It means when you go to prison, the law will protect you and reach in and ignore the prison culture that some people are worthy of death and others aren't. Some people are at the top of the food chain and others aren't.

The law applies equally. It's a fundamental concept in American -- in American life and in our Constitution. We don't always live up to it. We are not a nation without flaws, but it sure is the law, and we protect prostitutes the same way as presidents. We protect popes and we protect the poor. And, yes, we even protect sex offenders.

That is the aggravator, that when you walk into prison, if you are one of the inmates whose chest tightens just a little bit when you see a guy like Julio Salazar, the law follows you. You are going to get your time, and Lino Flores deserved every single second of every single day that that judge gave him, period.

But he was entitled to serve that sentence and to sit in that cell. It was not a sentence to get his skull bashed into a concrete floor, stomped on, punched, stabbed and kicked. That was not his sentence. The fact that this happened in prison is independently a reason to justify the death penalty, but there is more.

The second one is that the defendant had been previously convicted of a serious offense. He says accident. I'm not going to fight and go back and forth. You have all the evidence. Anything but.

That was the wake-up call. If this was so impactful and so meaningful, the law says when you get a serious offense, you had better take the hint.

In no uncertain terms, the fact that you have killed before is independently a reason to justify the death penalty in this case, and the law says it's an independent reason in this case. You get one killing, and that's it.

The law draws a very distinct and obvious line, and it ain't that hard.

MR. TALLAN: Your Honor, can we approach?

THE COURT: You may.

(An off-the-record discussion was held at the bench out of the hearing of the jury and the court reporter.)

THE COURT: Ladies and gentlemen, we're going to

take a recess. Please remember the admonition. We'll have you back here shortly.

(The following proceedings took place out of the presence of the jury.)

THE COURT: Okay. Have a seat. All right. The jury has left the courtroom. We're going to start with the most recent sidebar.

Mr. Tallan, it's your objection.

MR. TALLAN: Your Honor, the state was arguing --

THE COURT: I don't know how far away the jury is so let's keep our voices down.

MR. TALLAN: Your Honor, the state was arguing and told the jury that the law says you get one murder, one killing, and that's it.

He went on and I made my objection. That is not the law. What it says is if you have a prior serious offense, you are eligible for the death penalty, not that you get the death penalty.

The implication to the jury was that you get one killing and second strike you're out. That was the inference -- intentional inference to the jury. This is prosecutorial misconduct. This is the second time that the state has intentionally said things to the jury that are improper and not true, not correct.

I know we're going to address the first sidebar,

but the first sidebar was saying that the jury wasn't presented with pleadings or motions when the state knows the jury never gets pleadings or motions.

That opens the door to my being able to argue the motions and pleadings we did file to keep out so much of this, those motions that were denied.

The motions where we didn't give our experts juvenile records because they shouldn't have been gotten and they were improperly gotten.

And with all due respect, you know, I believe the Court ruled improperly on that. I move for a mistrial, these two egregious prosecutorial misconduct statements to the jury in 45 minutes.

The first one being that the defense had a burden to prove mitigation and we didn't present them with motions and pleadings for why certain evidence wasn't presented, and now this idea of the defendant gets one killing and that's it, two strikes and you're out.

And it's leading into this whole thing of although -- the state started out saying it's not mathematical. They're now leading into an argument that's mathematical. Three aggravators, therefore, you have to find at least three mitigators, and that's not the law. It doesn't matter whether you have 100 aggravators. It just makes you eligible.

MR. GODDARD: I said nothing of the sort, and I'm going to go through this in order, the first one being the most recent.

What I said was prior serious offense is an independent reason for the death penalty. It is. That is a correct statement of the law. It was not said in a vacuum. I just spent the last 20 minutes going over the law as it applies, and it was a -- it had the strength of mitigation, strength of aggravation, and I am explaining a difficult term in light of and the quality or value.

THE COURT: Mr. Goddard, that's what you said first. Your last statement on that, which drew the objection was -- and, again, this is my best effort at a quote, you get one killing and that's it.

MR. GODDARD: It is a prior serious offense. You are not eligible for the death penalty just because you commit a homicide. It is a prior serious offense.

Prior. That implies two. It is a colloquialism that apparently -- and it's being stretched into something that it's not, but you do get -- other -- it's not -- I said nothing of the sort that this is mathematical or automatic, nothing even remotely. The defense said that in the argument -- and, Judge, I get -- I get to make this record.

THE COURT: But you are not addressing the question I asked.

MR. GODDARD: Well, I'm not addressing it apparently to anyone's satisfaction. I am just making my record.

THE COURT: Mr. Goddard --

MR. GODDARD: And what I said was, you get one killing and then you become eligible for the death penalty. That is a true statement of the law.

I mean, I'm happy to answer questions and why you think that that's insufficient, but that is what I said.

THE COURT: I think that that's an accurate statement of the law. What I asked was, and my memory and what I wrote down -- and, again, I don't always write it exactly right. What I believe you said was, you get one killing and that's it, which then begs the question what does "it" mean?

MR. GODDARD: Well, how about I be allowed to explain that and be allowed to argue. I mean, the case law on argument is wide latitude. And if he wants to get up here and say -- and characterize my argument, fair enough.

But what I was talking about was independent reasons for the death penalty, that you can have one aggravator and be -- and be -- and that is an independent reason for the death penalty.

And I even mentioned that. I said, but there's more. And I said, when talking about the second aggravator,

this is an independent reason for the death penalty.

I did not say anything or even imply -- or certainly didn't mean to imply, but I said that this is -- that this is an automatic decision. They know that. They just got the law.

Why am I talking about this system and having a graph on the board if it's automatic? There would be two boxes on my board.

Oh, you killed again? Death. Sit down.

I walked them through a process, and I think it was a fair walk through the law. And I think my argument is being mischaracterized because they don't -- the defense doesn't like that I'm asking for the death penalty. Well, I'm going to ask for the death penalty.

What I'm saying is, and what I told this jury, is that there are independent reasons for it. It's a separate evaluation.

THE COURT: Mr. Goddard, we haven't really approached the whole mistrial argument. I will tell you candidly, at least at this point, I'm not buying the intentional misconduct, rather I wrote it down because I was surprised when I heard it. You get one killing and that's it.

And you are right. You get broad latitude in making an argument, but you don't get to even inadvertently

mislead or confuse the jury when it can be corrected.

And "that's it" is suggestive of something more than just, I think -- so I wrote it down, suggestive of more than just being eligible. You started talking about eligibility and then you morphed into a different argument.

MR. GODDARD: I will do, and I have always done what the Court has asked me, but it's not like this is a history here.

Since jury selection, I have emphasized the necessity of evaluation or holding the state to its burden and independent -- independent assessment of the evidence.

I spent the last 20 minutes of this argument talking about independent assessment of evidence. So I will do whatever the Court asks. I just feel like the Court -- well, I understand what the defense is doing.

THE COURT: Mr. Goddard, make your record. You're not going to offend me. Make a record.

MR. GODDARD: I think you are being a little harsh on me, and I think there is an intent to read what was said, not what was actually said.

But I'm fine. Big boy. I can handle it. If the Court wants me to rephrase in a different way, that's fine. And that is what I have always said.

But I do think I get wide latitude. I think they get wide latitude standing up, and it's not what I was

implying, period.

THE COURT: What about -- and I will tell you candidly I didn't fully capture -- I alerted when you started talking about -- I think it was motions, not pleadings.

I mean, I -- I thought you were just sort of setting -- making the argument of is it proven, and then we got into motions somehow. I mean, what --

MR. GODDARD: What I was referencing was some sort of document that said the victim's sister's name or the -- that the victim even had a sister.

We didn't know she existed until this trial started, and the defense got up in cross and suggested that the defendant was told it by the defense team.

And what I was trying to articulate was there's no document, there's no testimony, there's nothing. It was an implication and innuendo of a fact. It wasn't a proven fact, and I was tying that to what lawyers say isn't evidence and tying what evidence is, on the witness stand or received as an exhibit.

So what I was talking about was a -- some document -- maybe I shouldn't have said motion or a pleading, but a document that says sister's name.

I think you could introduce that, or the sister even exists. The only reference I saw to the next of kin

was victim's representative for the last seven years.

The point was that the defense had misled the jury when they suggested that it was the defense that gave Julio the presence of the sister, not Julio talking to Lino.

THE COURT: I'm sorry. That it was defense that did what?

MR. GODDARD: That alerted Julio to the presence of the sister, not Julio talking to Lino, which would be consistent with the state's theory of rocked to sleep.

THE COURT: I'm sorry. You're losing me. That it would -- would you say that again.

And let me be blunt. I'm confused about the whole sister talk. I'm not -- I'm not -- I'm not connecting this up, what you're referring to.

MR. GODDARD: Okay. Dr. Seward's testimony on Monday -- or Tuesday. Maybe it was the week before. I don't remember.

I pointed out in the transcript of the discussion with Mr. Seward that the defendant said something about the victim's sister. Our theory of the case on that respect and respect to the premeditation has always been rocked to sleep, that the defendant has been talking to Lino Flores and putting him at ease.

Evidence that they were talking would be that the defendant knew something about Lino Flores, like his family.

The defense suggested, well, maybe the defense team told Julio. So I was showing them because this happened in penalty phase that's not -- that's not proven. They didn't receive anything on that. It was just suggested. So that's what I was addressing.

THE COURT: By the way, when you're talking about that evidence only comes from over where the exhibits are or the witness stand, just as a reminder we've had witnesses testifying by WebEx. Just so that it's not misunderstood, that that's testimony too.

MR. GODDARD: I get it. That's why I feel a little bit -- yes, but I think the jury understands what I mean.

THE COURT: I'm not raising it as a criticism. I'm just --

MR. GODDARD: I understand.

THE COURT: -- pointing out I'm not on the spot like you guys are providing your closings, and I'm hearing something that maybe you didn't think about.

MR. GODDARD: Well, and I can change that reference too.

THE COURT: Mr. Tallan?

MR. TALLAN: Your Honor, serious offense does not have to be a killing. You can commit a non-homicide serious offense and be eligible for the death penalty.

The statement was, you get one killing and that's it. He's now planted in the jury's mind that that's -- because he said, the law says you get one killing and that's it. He's now planted in the jury's mind that because Mr. Salazar killed someone in prison, the only just, as he put it, and appropriate sentence is death.

So we're asking either for a mistrial or a corrective instruction from the Court instructing the jury that the statement by Mr. Goddard that the law says you get one killing and that's it, is not a correct statement of the law; that a prior serious offense makes you eligible for the death penalty; that the -- the instructions themselves say you never have to return a death sentence. Even if there's no mitigation, you still don't have to return a death sentence. So that shows that it's an improper statement of the law.

THE COURT: Just so I am understanding what you are asking, are you asking me to essentially just repeat from the instructions that, just to be clear, there's no presumption of death, there's no presumption of life; that the finding of an aggravating circumstance does not change that. An aggravating circumstance only makes death a possible sentence or eligible for death?

MR. TALLAN: No.

THE COURT: Is that the gist?

MR. TALLAN: No. I'm asking for the Court to instruct the jury that --

THE COURT: That's what I'm asking, what you are asking me to say.

MR. TALLAN: Yes. I'm asking the Court to instruct the jury that the statement by the state that the law is you get one killing and that's it, is an incorrect and improper statement, and that is not the law.

THE COURT: Period?

MR. TALLAN: Yes.

THE COURT: Mr. Goddard, I'm going to -- without waiving any objections, I'm going to make a statement. I think that it should be prefaced with just -- so there is no confusion, that they have been instructed by the Court and they have heard from both attorneys that the presence of an aggravator makes a person eligible for the death penalty. And to that end, correcting that they just heard the statement that was along the lines of you get one killing and that's it.

So that there be no misunderstanding, that is not an accurate statement of the law with respect to the presence of an aggravating factor, or something like that.

MR. GODDARD: Judge, this is a comment from the Court on my professionalism to the jury, and I don't know how many times I have told this jury in this argument, if

you come back life, hold your head up high. I've said it at least three times.

The Court can instruct on the law and wants to instruct on my professionalism, fine, but that's not what I told them. And this is not in an vacuum. They have already found prior serious.

THE COURT: Mr. Goddard, I have a problem with the statement and something needs to be done to remedy it, and what I am inviting you to do is to provide some input on how to remedy what may be confusing or misleading the jury unintentionally from what you have already told them earlier in your closing and that they have already heard from others and the need to remedy it.

Obviously, you have heard Mr. Tallan's suggestion. I'm going to do something -- or we're going to do something and I'm inviting you to have input into that.

MR. GODDARD: Whatever the Court thinks is appropriate.

THE COURT: So you have no input?

MR. GODDARD: No.

THE COURT: Okay. All right.

Mr. Tallan, did you want to make -- continue with your motion for mistrial, make your record?

MR. TALLAN: I'm sorry, Your Honor. I forgot my hearing aids this morning. If you could speak closer to the

mic.

THE COURT: Yeah. You made a statement of a motion for mistrial at the two sidebars. If you wish to make any further record of that, this would be the time.

MR. TALLAN: Your Honor, this is cumulative misconduct. I move for a mistrial for the reasons I stated. The jury has been mislead twice now. So I move for a mistrial.

If the Court's not going to grant a mistrial and only give the corrective instruction, I'm not waiving my motion for mistrial and I object on the Fifth, Sixth, Eighth, and Fourteen Amendments to the United States Constitution and Articles 3, 5, 8 and, 14 -- that's right, 3, 4, 8, 10 and 15, thank you, Mr. Wilkison, of the Arizona Constitution.

THE COURT: Mr. Goddard, any further record you wish to make?

MR. GODDARD: Cumulative is not the standard. So, I mean, they're using the wrong case law. But since I don't agree with the basic premise, I do think that this is an area that requires why -- or that allows the wide latitude. I'm not rehashing the Court's decision.

What I'm saying is that that is what the case law looks at. I believe the case is actually State v. Riley, but the jury has been instructed that what lawyers say isn't

evidence. The jury has been instructed on the law prior to the arguments. And if there's a curative instruction, there's a curative instruction. So that is not the basis for a mistrial.

THE COURT: Mr. Tallan, any further record?

MR. TALLAN: I will state -- cite In Re: Martinez, 248 Arizona 458 2020.

THE COURT: Okay. All right. The motion for a mistrial on either or both grounds is denied.

As far as the Court is concerned, the state has clearly and repeatedly mentioned the correct rule. And frankly, again, I think it's a slip of the tongue.

There was a casual argument made that has the potential to confuse or mislead the judge -- the jury, and the Court notes that the Court has perceived the suggestion from defense as to what they think a curative instruction is, that it's appropriate.

The Court notes, and without waiving the state's objection to a curative instruction, the state has elected not to recommend a curative instruction. So the Court will do so without the state's input.

So anything else before we get the jury back in here?

MR. TALLAN: Yes, Your Honor. The Court said this was a casual statement. I disagree with that. It was

an emphatic, practically yelling statement to the jury. It was anything but casual.

THE COURT: Well, I'm sharing with you my assessment of it was that it's a slip of the tongue. And whether casual is the right term or not, that's why I'm not finding misconduct but rather a concern that the jury could be confused or misled, which I felt some form of correction was necessary.

Okay. Polo, let's get the jury back in here.

MR. TALLAN: Your Honor, what was the Court's final decision on the curative instruction? What's the Court going to read to the jury?

THE COURT: I don't have it written out. I am just going to speak to them.

(The following proceedings took place in the presence of the jury.)

THE COURT: Okay. Folks, please have a seat. Okay. We're back on CR201502140. We've got parties, counsel, and all 16 jurors present.

Ladies and gentlemen, there was an objection when we took our recess. Just to be clear, the Court and the parties have all instructed or argued the law that when an aggravating factor is proven, or even if multiple aggravating factors are proven, the law does not presume what the sentence will be.

An aggravating factor merely makes a defendant eligible for the death penalty.

And, again, both counsel have argued this. There was an argument where you -- where I believe, and this is my best effort to summarize it, where you heard from the state you get one killing and that's it.

Just to clarify that that is not an accurate statement as to imposition of death penalty. That would only be an accurate statement as to eligibility for death penalty.

Mr. Goddard, please proceed.

MR. GODDARD: Thank you, Judge.

Look, nothing is automatic. That's why we have a system and that's why we run things through it, each and every piece of evidence that could be mitigation. Each and every piece is weighed against -- or balanced against in light of the quality or value, and that is done independently of each aggravator.

So, like I said in jury selection and like I'm telling you now, there is nothing automatic. You have to run this through a system.

And like I have said to you in the past, today, if that system leads you to life and it's a just sentence, hold your head high. But if it leads you to death and it's the just sentence, hold your head high.

This is about justice. There is nothing automatic about it. I didn't come up here and say, the defendant's evil, kill him, sit down. It's not that easy.

And it's not that easy that Julio -- or that Lino Flores was a rapist. So he deserved to die, sit down. It's not that easy.

And that is the third aggravator that we look at when we look at in light of and we assess the quality or the value of this evidence is the depravity and the heinousness of that murder.

It was more than just murder, and you have already found that, and that's where the word "evil" comes in, the shockingly evil. It was in the definition of depravity, heinous or depraved. And that's what you're balancing this all against. That is the process that we're working with.

Each individual aggravator is an independent reason to be able to apply this assessment and find the death penalty, and each individual mitigator is -- could be enough if you run it through the assessment to lead you to life. That's what I've been trying to tell you. It's not easy.

You have to develop a system, but that system has a duty of you all talking together and it has a duty of you consulting and looking at this with a process and asking

yourselves certain questions. What is it that I'm looking at? Where was it -- where did I get it?

Is it mitigation? Has it been proven? What's the quality or the value? Is it sufficiently substantial? And work through the evidence.

So the first -- I'm going to have to switch back and forth. The first sort of major -- I'm kind of picking back up.

There's a checklist. All right. So the potential mitigating factors. I'm actually going to get to these in a second.

All right. Unusual and substantial duress, page seven. Like I said, what I'm going to try to do is go through this as an example, not to rehash but as an example of how it is that you work through the evidence.

Now you all have your notes and your notes are what -- are what controls, but what you are looking at here is not just duress. What does the instruction actually say? And we're going to just try to systematize this.

It says unusual and substantial duress. It has to be both, unusual and substantial. This is where free will comes into it by actually inducing him, the defendant, to do an act contrary to his free will. It's an actual and unusual and substantial thing that made him do something that he ordinarily wouldn't do.

This is where your notes help and the evidence that you can look through. You know, your notes control, but you can ask yourself, all right, well, who is he? Mr. Johnson said that in his -- I don't know -- one of the closing arguments.

Maybe in opening statement. Mr. Johnson said it at some point. It was very impactful. But who he's about -- the evidence that you're going to get is who he is and what he's about, meaning the defendant.

So you ask yourself, okay, is there something unusual and substantial? When you look at him, you can look at him in his past. What is past is prologue. You look at, well, what kind of guy was he?

You know, age eight -- or sorry -- age 12 is the incident in November, 1994, holds the knife up to the two brothers and stabs a minor but -- a minor in the hand, according to the brother, but that's what he does.

At age 13, 1995, March 1995, the school -- the elementary school asked for the removal of the four gang members, the defendant being one of them, because of the threats. You remember Officer Fazekas. The defendant admits to him, I was a member of the Varrio Hispanic Homeboys back in -- since 1994. I was jumped in.

In 1996, age 14, the defendant takes the bike from the kid. And while the dad is trying to get it back,

he shoots four times. And the defendant, in his allocution, said that I thought he was going to run me over.

Run that through the evidence. What was the actual evidence at the time? At the time it was it went into the side of the car, not into the windshield. It was in the side of the car, and he reloaded.

He gets sent to Adobe. We find out from Dr. Gomez that he's still in the gang and he's a leader there. He gets out. In January of 2000, by April of 2000, he's running from the cops. Just got out of juvy. He's running from the cops.

Should have been a wake-up. It wasn't. A couple weeks later -- you know, we heard from Sandra. I don't know if you caught this, but we heard from Sandra that the defendant was playing with a gun before this in front of her kid and she asked him to put it away.

There were lots of places here where he could have stopped, and he shoots his cousin in the face. And what does he do? He says that Paulo still has a pulse -- and this is going to be important for significant impairment, but he didn't want to get in trouble. So Paulo dies. And what did they do?

They run and dump his body into an alley because they didn't want to get in trouble. He didn't want to get in trouble.

So he arrives in prison at 2001. January 23rd of 2001. By August, he's found with two shanks in his TV. He's being escorted in 2002. Gets into a fight with CO Miranda and Sandoval. Has to be taken down.

2005 is the spear, the missed, and flushes the tip down the toilet. 2006 is reaching through the trap.

By 2007, he stabs Sergeant Flores in the head. The other thing with that is -- that's the attempted murder. There's another officer that he tried to stab. He just happened to be wearing his protective vest. So it was two officers there.

2010, Officer Greenwald. He gets assaulted. They find handcuff keys. And that's when we get to 2014, the murder of Lino Flores.

You have to ask yourself what kind of guy was he? Was this -- was his past -- does his past tell you that it's so unusual and so substantial that it took away his free will?

Notice what I didn't talk about? Mexican Mafia. Despite all that history independently, not even getting to the Mexican Mafia, which is absolutely critical evidence. But even if you don't accept it, you have got all this history that shows you he's not above it.

There was nothing unusual and substantial acting on him. It's who he was. And, oh, yeah, he's a part of a

criminal street -- a prison gang whose first rule is blood in.

There was nothing unusual or substantial, nothing taking away his free will. We're not just inventing the word "free will." It's there in the elements of unusual and substantial duress.

Same thing with substantial impairment. A couple things with this that will stand out to you, that at or near the time of the offense. That's when I was saying that all their experts said that is an element of substantial impairment and none of their experts asked about it.

We can go through the evidence on this, but there is an inherent contradiction with this when you consider it along with duress, but we'll get there.

But just for the sake of argument, we'll go through the evidence on that, and what this is is did the defendant appreciate right from wrong, or could he conform his conduct to the requirements of the law?

All right. It's going back to his past. He tells Officer Miller after the shooting -- Officer Miller asked him, are you going to shoot me? Maybe. But I didn't want to get in trouble and cause too much harm. You guys have the transcript.

He tells Officer Miller later on he understands what murder is when he was approached by the gravity -- when

the defendant was approached by the gravity of the shooting into the car with the dad and the son.

He doesn't take Paulo to the hospital. Why? He didn't want to get in trouble. He understands this. They hide the body. Why? Or they dump the body. Where did they dump it? Far away from his neighborhood out in Glendale. That was the point so they wouldn't get in trouble.

What does he do when he comes home -- or I'm sorry. Before he even comes home, he gets rid of the gun. Why? He understands that that can get you in trouble. That's evidence.

So then he comes home. What was the testimony? He washes his clothes and tells his family it was a suicide. Why? Because he understands he's going to get in trouble. And, yes, he eventually comes clean. That doesn't mean he didn't understand what he was doing.

But then you look at this murder. That's the framework of what we're dealing with, and you look at this murder of Lino Flores. The moment that the murder is done, what happens? He lays down on the floor, prones out, tells the officers it's done. Totally compliant.

Here's a critical point, critical piece of evidence. He waits until the officers leave that rec pen. It's like seven minutes. He waits until the officers leave.

If he was really in a situation where he had no

choice, if he was really in a situation where he felt like he had no escape, in Sophie's Choice, my life or his. You attack. The moment those cuffs come off, you make a beeline for the cooler, you pull out the weapon. And in front of those COs, you do it.

He does it with Lacy right in front of the COs and everyone. Doesn't do it with Lino. He waits. If he was truly in a situation he couldn't get out of, you attack in front of the COs.

Even does a dry run. You will see him in the non-abridged version or whatever -- the lengthier version of the video, of the murder. You will see him go to the water cooler. Lino doesn't react at all. They keep on playing for a little bit. He goes back and gets the weapon. It's all right there.

He knew right from wrong. He knew he had to hide his crime. He couldn't do it in front of the COs. He had to do it.

So he prongs out. He gets cuffed up. He's no problem. There's no more attacks. It's done. He goes before Dr. Cooper-Lopez and says that he understands the death penalty as part of the competency hearing.

And when he talks to Dr. Seward, he even tells that he enjoys -- he enjoyed the star status for a little while. Even uses it as an ice breaker with the ladies.

Signs off something about the boogie man in his letters. He's proud of it at least for a little bit.

When he -- before he is charged, just a month after the murder, I think it's Exhibit 383, before apparently he finds out that there's a video, he denies it. Look at that exhibit. I believe it's 338. It says, I'm innocent, wasn't even there.

He understands what he's doing is wrong. He's denying it. That is the -- that is someone who can control what they're doing, who can conform his actions to the law.

The remaining factors, you're not given a whole lot of instruction on these, but it is what it is. Found on page three. I will just say work it through the process. Ask yourself for each and every one of them. Work it through and compare that up against the aggravating factors in this case, all three of them.

Oh, and the contradiction here. If you are going to have unusual and substantial duress, it is an inherent contradiction to say, I did what I had to do because of what -- if I didn't do it, I was going to be killed too, but I had absolutely no idea that what I was doing was wrong. You cannot have that. It is a logical inconsistency.

You can't say I'm making a value judgment, yes, I killed him. I was going to be killed, but I had no idea that was wrong. And the law kind of points that out when --

as part of the definition, an illegal purpose.

He gets to assert whatever he wants to assert, but you can see how that is just not possible. You can't walk in and say, I did what I had to do but I had no idea it was wrong. It just doesn't work that way, but you gotta consider it.

And it's also that he never said he didn't have options. He doesn't actually say that he -- or at least that's not the evidence. What he says is I don't like -- I don't like my preferences. And what I mean by that is look at the testimony that Carlos Reyna gave. He said thousands of STGs.

He estimated -- it's an estimate but thousands of STGs, people just like in the defendant's position were able to renounce and move on.

Then you have the testimony of Keland Boggs who says never has a Mexican Mafia member been killed for mafia reasons in protective custody. No one is saying it's a -- the defense says he wants a magical place. No one is saying it's a magical place.

It doesn't absolve you of the blood that you had when you got your sentence. You still go to prison. You are not rewarded for renouncing the Mexican Mafia, but you are not a killer if you remove yourself from that situation. You don't have to go that far.

What he says is, well, since I was just going to be in prison anyway, why do it? I mean, that's basically what he tells Dr. Seward. He doesn't like the preference. Well, it's of his own doing. No one forced him in to the Mexican Mafia. No one forced him to wait until the COs left.

No one forced him to kill Lino and then hit him again and again and again until his brains were out of his ears and to dance over the body and to get down into the pool of blood right next to Lino and choke him. No one forced that. That was all Julio.

He says he doesn't like his options in front of him. They are options of his own doing, but he never -- no one says that you're going to have a magical place, not ever. You don't get it out here when you didn't murder anyone and you don't get it in there. No one gets -- no one is entitled to the magical place. The question is: Is are you going to be a murderer?

There's also something that you never saw and that was a report of Julio being a victim. Not ever. The evidence is he's the predator, and Carlos Reyna told you that, yes, there are gangs in protective custody, but it's because of the predators.

We're ignoring -- didn't even address the premeditated nature of this murder, the planning that went

into it to get that shank to that water cooler, to make it available to him.

You know, you got -- Exhibit 328, the administrative investigation done by DOC, which said that the Mexican Mafia planned this. You saw those passages, that they knew in advance that the rec program would be an opportunity.

And remember the bird cages, how it was -- how the evidence came out. Exhibit 11. Remember all the talk about you can't see if you're in some of the back bird cages. You couldn't see very far.

There was all this talk about the mesh and things like that. Where was Julio? He was right next to the rec enclosure.

Where was Lino? Three bird cages back. You have the evidence. You can take a look. Trust that. But I believe the evidence was that he was three back. They don't get it both ways. The chances then of Lino seeing that shank go into the cooler, not good, if the evidence is you can't see well through these bird cages.

But Julio could, and he saw Angel Garcia and Jessie Bojorquez going back and forth. You saw that. You can continue to see that.

Angel Garcia puts some -- Mexican Mafia member Angel Garcia put something in that cooler. Julio could have

seen that. You all did.

Lino was in a tougher spot to see that, and he certainly acts like he doesn't see it. Again, I'm not going to rehash it, but you have got the video. He never acts -- it's pretty much nonstop having his back to Julio, but watch it. And there's absolutely times when Julio turns his back on Lino.

The premeditated nature of this crime shows you that this isn't significant impairment and this isn't unusual and substantial duress.

Let's talk about evil. I was saying before this isn't just a question of this person's evil, this person's not. Done. It's more nuance than that. I have no idea who Julio Salazar is, the man.

I only know his conduct, and you all have already found that the murder of Lino Flores was heinous or depraved. We're not here to just look at this and say, well, so and so's evil.

And that applies to Lino Flores. Rapist, rapist, rapist, rapist. Don't care about him. Just wish him dead. He got what he deserved. Fair enough.

This is more than that. We're measuring conduct over 40 years, or whatever it is, 30 years. That's what we're measuring, and we're applying that to the aggravating factors and how Lino died. That he just died is what it is.

It's the circumstances of that murder and what the defendant did to his body during that murder. That is all part of the -- the analysis and the assessment that you are going to give.

Mr. Tallan said that Julio was slowing down and could be controlled. The evidence says otherwise. I want you to think about these two assaults. Actually, the three assaults -- or the harassment and then the two assaults.

While he is pending the death penalty on the most significant enhanced lockdown that he could be on, that he is appealing since September 25th -- Exhibit 383, read that.

He's appealing his conditions knowing that there is going to be 16 eyes -- pairs of eyes staring at him and making an assessment of him. He still commits the assaults.

Maya Angelo said when someone shows you who they are, believe them the first time. He has shown us exactly who he is. He has been given every opportunity not to kill, every opportunity not to assault.

You know, they want to say on the one hand he's evil, let's just do away with him, and yet on the other hand there's a bunch of things that DOC didn't charge. It's giving him an opportunity. It isn't just sitting, waiting for him to fail, and I gotcha.

That's not just you're evil and you're done. Every single opportunity that they could give has been

given, and that's what you're assessing.

There really is no other just sentence here. If he gets life, that's exactly what he gets. He gets a life. It's happiness, sadness, anger, laughing, birthdays, funerals, pain. He gets a life.

Not what Paulo's got, not what Lino's got. All the blessings and all the horrible things that life is going to bring you, he gets it. He gets hope. He gets to read. He gets to listen to podcasts. His day doesn't change. And he has shown us exactly who he is, and it's just too much.

Look at the evidence in this case.

(Showing slides.)

MR. GODDARD: Mr. Tallan said don't be like the Mexican Mafia and Lino Flores. We don't do that. Nothing about this process is that.

The death penalty has been with civilization for as long as civilization has been around. It goes back to the ancient Hebrews. It goes back to the ancient Greeks. It is the idea that sometimes some life is sacred and sometimes enough is enough.

It goes back to the church doctors and fathers. It goes back to Aquinas. It goes back to Pope Pius, IX. It goes back to all the intellectual and moral thinkers.

It is something that was debated by Immanuel Kant. It's not something that we relish in but it is

something that we must do. That's where the phrase -- it is part of an ordered society because when you take it away, the only thing that is left is something less than justice, vigilantism, allowing -- the Greeks called it a blood pollution.

The idea that you have given so much that the only thing that you have left to give is your life, and it happens when this happens.

Immanuel Kant was the one who said it is necessary for an ordered society. It is not something that we relish in doing but it is something that we, as a society, are obligated to do.

It is a moral construct. Fairly debated. Not relished in, in appreciating the gravity of the situation, and I do appreciate the gravity of the situation. It was debated by the most moral thinkers of our ages, Aquinas, Risinger (phonetic), and have a moral position on the death penalty. But it is the law. It is the law in this state. Without passion or prejudice, it is how we apply the assessments and say this is just.

And this case is worth fighting for. It's worth going back into that room. It's worth fighting for the safety of prison. It's worth fighting for the memory of Paulo and the duty of Sergeant Flores, and it is worth fighting for for Lino Flores.

The mercy and compassion that we will extend to the defendant is that we don't kill you the way you killed. The mercy and compassion that was extended to Sergeant Flores was a shank to the head, and by the grace of God it didn't kill him, nothing that the defendant did.

The mercy and compassion that was given to Paolo in the backseat of that car while his life slipped away was for him to die in an alley or in the backseat of a car with no chance.

The mercy and compassion for Lino Flores was a foot to the head and to the concrete.

The only just sentence in this case is the death penalty, and I appreciate that that's a difficult thing to say, but I will look every one of you in the eye and tell you it is the appropriate sentence for this defendant for this crime, and it is the sentence that you should render.

THE COURT: Counsel, would you please approach.

(An off-the-record discussion was held at the bench out of the hearing of the jury and the court reporter.)

THE COURT: Okay. Ladies and gentlemen, we are going to take a quick recess, a quick comfort recess. We'll be back in about five minutes. Please remember the admonition. You still may not discuss amongst yourselves. The case is not yet in your hands.

THE BAILIFF: All rise for the jury.

(The following proceedings took place out of the presence of the jury.)

THE COURT: Please have a seat. The jury has just left the courtroom. We are back on the record. We have Mr. Salazar, his counsel, both prosecutors. The jury is gone.

Any quick records to make before we take a brief recess, Mr. Goddard?

MR. GODDARD: No, Your Honor.

THE COURT: And Mr. Tallan?

MR. TALLAN: No, Your Honor.

THE COURT: Very well. We'll start up again in five minutes.

Gentlemen, can you get Mr. Salazar back here in five minutes, please.

(Brief Recess.)

((The following proceedings took place in the presence of the jury.)

THE COURT: Folks, please have a seat.

Okay. We're back on the record in CR201502140. We have got parties, counsel, and all jurors present.

Mr. Tallan, when you are ready, sir.

MR. TALLAN: Thank you, Your Honor.

I'm going to start -- not finish but start with

where the state left off. We've had the death penalty throughout civilization.

Civilization. Would you like a list of who that civilization is nowadays? China, Iran, Iraq, Saudi Arabia, Egypt, North Korea, Afghanistan, Pakistan, Somalia, Yemen, Sudan, Indonesia, Vietnam, Belarus, Malaysia, the United Arab Emirates, South Sudan, Taiwan, India, Russia, Bangladesh, and Nigeria. Oh, and the United States.

Those are the countries in the world that still have the death penalty after all these years of civilization.

I'm not proud to be in that group, but that's a decision you have to make. Saying that the death penalty is a civilized thing, a part of civilization, no.

But while we have it, until we can get rid of it, we have to make sure that it's reserved for those who really deserve it, and I posit to you that Julio Salazar is not one of those people.

Now some of the evidence you heard, I was -- put forth some of the most compelling, if not the most compelling evidence you heard in this trial, you heard this morning from Julio Salazar. Now the state said they don't know him. They don't want to know him. They don't want to know him because it's easier to kill someone you don't know.

But I think, I hope, over these last six weeks,

if not this morning, you got to know a little bit about Julio Salazar. So you can make a decision that only you, and each individually you, can decide whether it's going to be life for Julio or the death penalty.

Now the state talked to you about some laws. So I respond -- we're going to go over some of these instructions because, again, why can't they just tell it straight?

Yes, there were three aggravating factors in this case. He was in prison. That makes him eligible. He had a prior serious offense. That makes him eligible. Now prior serious offense doesn't have to be a prior killing. There are other serious offenses that can make you eligible for the death penalty. For instance, kidnapping. That makes you eligible if you have a prior conviction.

You were given the feeling -- and the judge instructed you, this was not the law, and I have just got to make it clear. You get one killing and that's it. No. Uh-huh.

You are eligible for the death penalty. Never required to impose the death penalty.

And those three things, the in prison, the prior serious offense, and the -- your finding of heinous and depraved, it doesn't matter whether it's three, whether it's one, whether it's 100 things that make him eligible. You

are instructed this is not a math problem. It's not weighing.

You don't say there's -- we found three reasons that he'd be eligible for the death penalty, therefore, we have to find at least three reasons that are mitigating. No. That's not the case law that you were given. Those three things, each and independently, made him eligible.

Now the question is, is there mitigation sufficiently substantial to call for leniency?

So let's go over some of this law. Page one, you are not to be swayed by mere sympathy. That means sympathy is part of it. It doesn't say you can't use sympathy. It says sympathy not related to the evidence presented during the penalty phase.

That means evidence you heard that to you was sympathetic, that you have sympathy for Julio despite the terrible things he's done as mitigation and a reason to give life.

So as long as it relates to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstance of the offense. Again, sympathy, sympathy.

Down here, there was something about the defense didn't present, the defense didn't present. Look at the law. A juror may find mitigation and impose a life sentence

even if the defendant doesn't present any mitigation.

Can you say that we have presented no mitigation in this case? Can you say that no mitigation has been proven more likely than not by a preponderance of the evidence?

Can you say nothing that's been presented to you you believe by a preponderance of the evidence? Nothing you have heard is enough for sympathy? Not having his eyes glued shut as a kid, not trying to help his niece while he's incarcerated, not trying to keep his brother Alphonso from following his own footsteps. Is that nothing?

Here's that section about this is not mathematical. You have to do it in light of each individual qualitative evaluation of the facts and circumstances of the case.

The severity of the aggravating factors and the quality or value of the mitigating factors found by each juror. So, yeah, there's some bad aggravating factors in this.

Yes, he did recklessly kill. He was reckless. That's the law. Manslaughter. Reckless. He recklessly killed his cousin when he was 18. Playing around with a shotgun, back seat of the car, drinking, smoking weed, and the gun goes off. The officer can't be straight. He can't say it was a close contact wound or a near contact wound.

He has to say it's a contact wound. The barrel was up against the face, but it wasn't, and you heard how it wasn't. But, yes, that's a terrible thing.

And the stabbing of Sergeant Flores, terrible thing. And the killing of Lino Flores, a terrible thing.

There's a lot of mitigation in this case. You have heard how he's significantly impaired and how his mitigating circumstances may include but are not limited to significant impairment and unusual and substantial duress.

You are not limited in considering these mitigating circumstances. You can consider anything you heard from his brother, about giving the trophy to Alphonso.

Jesus, about being beaten, about how they were beaten. Cassandra, and her words of our neighborhoods were horrible. In her words, our families, as she put it, were fucked up. They were dysfunctional.

Imagine their lives. And you heard from the doctors how that does directly affect and is connected to the offense because it affects his ability to make reasoned decisions. He can know right from wrong, but his ability to conform himself to that, to not do wrong anyway, is affected.

And he may realize afterwards it's wrong. He does realize after it's wrong. He told the doctors afterwards it was wrong. He told the police officers when

he was 14 afterwards what I did was wrong, but he can't stop himself in the moment, and that's what the significant impairment is, and that's what significant impairment means.

The state wanted to -- they put a block around -- when they were talking about duress, used for illegal purposes. But then they left out the rest of the sentence -- or threats of bodily harm or other harm, or other means amounting to or tending to coerce the will of another and actually inducing him or her to act contrary to his or her free will. That's duress.

You don't have to be illegally imprisoned. It doesn't have to be for an illegal purpose. It's the "or" language.

Julio knew that his life would be threatened if he didn't do it. His life would be in danger. That's duress. He knew that if he didn't do it, that pressure to do it coerced him, overcame his not wanting to but he had to. That's what coercion is. That's with duress is.

There's a book made into a movie, Sophie's Choice. I don't know if any of you are familiar with it. The character lives a dangerous and reckless lifestyle, and we learn later on that part of this is because she had been sent to a concentration camp.

And when she got there, the guards said to her, you have got two children, which one do you want to send to

the gas chamber? Choose one or we kill them both.

It has become a vernacular of Sophie's Choice. How do you choose in that situation? But you have to. If you don't choose one, they both die.

If Julio doesn't kill Lino Flores, he dies. And Mr. Boggs may have said that in his experience, for whatever credibility you give him, there's been thousands of people who have renounced and no one's ever died on a PC yard.

Well, wait. Mr. Reyna said, yes, there's been lots of stabbings and attacks on the PC yard. People have been killed.

And Mr. Boggs never said anything about what happens after you get out of prison. He told you how there are -- he said like 33 members of the Arizona Mexican Mafia in prison and thousands outside.

Well, are you more likely to be attacked and killed with that target on your back that he said never expires, never runs out once you get out?

There it is, the shower chair. The shower chair that they knew someone needed to sit in to make sure that this didn't happen, something like this didn't happen. The one they use when the mental health people were out there, and then they started up bringing out the people from the level five max security pod, Julio. The very first day they brought them out there was that day, August 16th, 2014, and

they had no one in that chair.

It's not their fault, the killing of Lino Flores, but they sure bear some responsibility.

And you heard Mr. Goddard claim to you that after this happened, Julio -- we said -- I want to make it correct, that after he was charged in this offense, he committed three more offenses even though he was in maximum enhancement security.

Was he? Because we talked about the harassment from 2018 was the handing the love letter through the slot. Are you going to kill him for that?

The attempted assault in 2022, was he -- you saw the video. They just played it again for you. Was he alone in the hallway when they brought the other inmate right passed him? No. Was he in leg chains? No.

You heard how on max enhancements, they're supposed to have at least two guards and maybe even someone with a camera. Was there on that video? No.

One guard with Julio handcuffed behind his back and the guy walks by and he tries to kick him and misses. So, no, he was not in max enhancement custody. Keep it straight. Are you going to kill him for that?

March of 2023, coming back from the Covid shots, there's another inmate, a sex offender that he knows, and he gets away from the one guard when he's handcuffed behind his

back. Maybe he was -- maybe one of these others was a sex offender. It was one of them was a sex offender. You have got the evidence. One of them had a sex offense in his printout.

But one guard, handcuffed behind his back, no leg restraints, not two guards, and he charges at him and yells at him, and the guard gets in front of him and says stop, and he stops. Are you going to kill him for that?

Are these three things since 2014 so heinous as the state made out, or are they still overplaying their hand?

The opposing police, April of 2000. They tried to pull him over while he's driving for suspicion of DUI or whatever, and he jumps out of the car and runs. That's the opposing police. Never gets near him. Never says anything. Never does anything to the police.

You heard that. All he does is run from the car. Sure doesn't seem like a heinous offense, aggravating factor, to help convince you of the death penalty.

Aggravated assault with a knife, 1994, when he was 12 years old. Remember? That's where they go to the school and they talk to Manuel. Manuel says that's not what happened. Julio wasn't holding a knife to the little kid's throat.

The older brother of the kids came charging to

him. Julio pulls his knife out in self-defense, and the 17 year old grabs Julio, tries to get the knife away and gets a one-eighth inch cut on his thumb. And the officers who investigate say they won't talk to us, and based on what we've heard from the witness, we don't think there's enough evidence to even charge him with this to even send him to juvenile. Worth killing him?

The threats at the school, you heard the evidence, not made by Julio Salazar. Made by Machado and Munoz children.

Julio's never charged in juvenile court for that. They say no likelihood of conviction. We're not even going to charge him. Then is that anything worthy of death?

I gotta be honest. I don't remember which one of these was the food slot. I think it was this one. The punch through the food slot out on rec. Really? That's a heinous offense to help support killing Julio Salazar?

The rolled up paper spear with the tip on it. Never comes in contact with the guy. It's almost ridiculous sounding, making a spear out of a piece of paper. Putting a tip on it and trying to stab someone as they walk down the hallway through your food slot. Heinous offense? Worthy of killing someone?

The assault on the officers of 2002. So Julio is what now, 19 years old, twenty-one years ago, where he

supposedly leaned back and headbutt the guy. So they took him to the ground with the least force necessary only giving him a minor scratch on the chin. Then he was taken on a gurney to the hospital -- to medical and they had to Steri Strip his chin shut.

Any real injuries to these officers? No. Nineteen years old. Is that a heinous offense? It's an offense, yes, sure. It's a disciplinary charge. Was he charged criminally with that? No.

Officer Greenwald, yeah. Officer Greenwald didn't follow the policies and didn't have any handcuffs. And instead of going to get handcuffs or waiting for someone to bring him handcuffs, he opens the cell door, and he and Julio had issues.

The guy next door said, yeah, Greenwald was an asshole to Julio. Yeah, he puts a beating on Greenwald thirteen years ago, but it's not as bad as they made out.

Yeah, it was bad, but he was never criminally charged with it. It was a discipline-only matter. It's bad, but is it heinous, depraved, or reason to kill?

What we're really left with is the shooting at the van -- at the Blazer as it drove by because he thought they were trying to run him over. So as it drove by, he shot at it, yes, he did. He pled guilty and he went to juvenile prison for it.

And the reckless death of his cousin and the stabbing of Sergeant Flores. How many times does he have to be punished for those three? Because, you know, this isn't really about Lino Flores. This is about the other three. They couldn't kill him before so they want to kill him now.

What we're here about, as they put it, this crime, this defendant, Julio Salazar. What is the punishment for this crime? Not re-punishing him for other crimes. What's the punishment for this crime?

Lino Flores killed in prison. Obviously, he wasn't put to death. He had raped someone to go to prison. A serious offense. Life in prison until Julio took his life.

They talked about his mom and the records. Yeah, records don't exist that are 35 and -- 28 to 35 years old. Yeah, we couldn't get the records from him being run over, but you heard from plenty of witnesses. Is that really in dispute?

The Adobe Mountain records, they were destroyed, but we don't have a duty to produce those records. We produced witnesses who talked about it. Julio talked about it. Sandra Carrillo talked about it. Jesus talked about it. Alphonso talked about it.

They talked about, you know, how much better Dr. Seward was because he recorded. You saw Dr. Seward on the

stand. Every question I asked him, he couldn't remember. Remember testifying about this? No. Do you remember saying this? No. It was the day before, two days before. Yeah, he's got to record everything because he can't remember anything.

Dr. Gomez has no problem remembering things so he can write four single paged -- four single -- you know, four full pages, single-spaced, notes typed up to remind him of what was said and what he found.

And, yes, he only spent two and a half hours with Julio. He spent like another 40 hours going through records and going through Dr. Seward's raw data and Dr. Ouaou's raw data and Dr. Hyde's raw data. All the -- not Dr. Hyde but Dr. Abrams, all the other raw data. He went through it all. That's where he spent his hours. Then he confirmed what he could tell from the record by going and actually talking to Julio.

Quality over quantity. Experience, clinical experience over no clinical experience. Rejected by the board certification because of the reports, like the report he submitted in this one, and suggesting for cross-examination articles that are 20 some years old.

I think you can be the judge of the credibility of the different experts.

They claim that Dr. Seward was the only one who

thought about the Mexican Mafia and put that in his report. That's not true. Because the other experts read Dr. Seward's report and commented on, one, why is all this stuff being brought up about the Mexican Mafia? That has nothing to do with whether he has PTSD or ADHD or any of those things. Because Dr. Seward is Dr. ASPD. That's all he ever finds, ASPD.

He couldn't find PTSD even though he marked every single item down that qualified and showed that Julio had PTSD, but he wasn't going to say PTSD.

The catchall. The state wanted to minimize what they called the catchall: His childhood, his neighborhood, his mental health, his medical health, all those things as insignificant catchall. No.

Any single one of those things, according to the instructions, can be enough to call for leniency and life. In fact, like I said before, you're told even if no mitigation is presented, the instructions say you can still come back with life. You can still show leniency.

Mr. Goddard talked about the duty to discuss. Yes, you have to discuss it with each other. It's an individualized thing. And if you, as an individual, have decided for life or if you have decided for death, that is your individual thing and you should stick with it.

A hung jury, the inability -- you are told if you

can't agree, that's okay. Tell the judge. That is an acceptable outcome in this case.

I implore you, whichever way it is, don't cave. Stand by your convictions. If you have made up your mind, don't let anyone bully you one way or the other.

The state told you evidence -- you need evidence, not emotion. Hu-huh. Emotion is fine and allowed. It's called for in the mitigation. In the instructions, it talks about -- the word "emotion" is used. Anything can be mitigation.

You are not limited to considering these mitigating circumstances, page six. It's not evidence you're looking at. You're looking at circumstances. What are the circumstances of Julio's life?

They made a comment about our staff, don't think that they've been ganged up on like it's four against two. Look right over there. See what that is? There's a room back there with the one-way mirror. There's staff back there in that room listening. There's a speaker back there. So don't be -- I don't even know why it was brought up. You know, it's one of those, again, just tell it straight.

You don't need a connection for mitigation, and Mr. Goddard gave that thing about olives (sic). All the mitigation you heard in this case is connected to why Julio did what he did because it all relates to his inability to

make a proper decision. All related to his impulsivity, the fact that he can't stop himself.

If we had said Julio at age five had a broken toe -- okay. That would not be connected to anything. What we presented all had to do with Julio's mind, his mental health, his frontal lobe problems. It is connected because you heard how many times it goes to his decision making.

He may know right from wrong but he can't do right from wrong because he's controlled by his emotions and the impulsivity and aggressiveness you find with the ASPD and PTSD.

Dr. Seward didn't even want to admit that even when I pointed it out to him in the DSM. Look, see, it says right here, people with PTSD often act aggressively. And he tried to, you know, poo-poo it, just like his thing with the avoidance, that you can't have PTSD if you do aggressive behavior.

Well, it says right there in the book you can, and the doctors told you, no, it's about avoiding thoughts and memories, and why battered women or veterans can have PTSD but the battered woman still goes back to those relationships.

She doesn't want to think about the fact that the man she's supposed to love and who is supposed to love her beats her. She doesn't deal with the situation and get out

of the situation. She avoids thinking about it and goes back. That's avoidance.

Just like the military veteran who reenlists. He goes back to the violence even though he's got PTSD.

Yeah. Julio was a tough 14-year-old kid. They put up that quote up there, you know, would you have shot me? Maybe. Maybe. Julio was just acting tough, fourteen, immature; that he understands right from wrong when he was 14.

They put that quote up there. Does he really or is he just answering the way he knows he's supposed to answer? And even if he does, can he stop himself from acting so emotionally and not thinking before doing?

And they showed you the video again, and they wanted to make a deal about, oh, he then says, I'm done, I'm done. Twenty-five minutes later, I'm done.

Yeah, because 25 minutes later he can't believe that no one has come by, or when Ms. Eno came by, she just walked by. Yeah, by then he's calmed down. It's over with. He's done. After he's washed himself off.

You saw on the video again how he opens that jug to get water. He sees the weapon. He grabs it and he attacks. He doesn't wait. He doesn't go back to playing basketball. He sees the weapon in the jug. He grabs it. He attacks.

The state just can't get off this idea of planning. Apparently Julio's a mind reader, and all these Mexican Mafia members supposedly are mind readers. They knew that Lino Flores was going to be taken out, even though he was on the no-rec list, and that he was going to volunteer to go into the rec enclosure that day with Julio.

That's quite a stretch. How on earth would they know that the guards were going to mess up, post the wrong no-rec list and, therefore, Lino Flores is going to be taken out even though he's not supposed to be. How can it be preplanned? It just doesn't make sense.

They say that, you know, Julio claims that he's the victim. Don't feel bad for him. He's not a victim. He's not a victim of the death of Lino Flores. He would have been had he not done it. What he's a victim of is the life he's led, of the way he was raised, the environment he was raised in, of the decisions he saw everyone else making and emulated.

So we're asking you to give Julio life. What is that life? That is a life in a cell the size of your bathroom at home that you sit in 23 hours a day, seven days a week, and think about all the things you've done and all the things you'll never get to do.

Not much of a life, but that's the life we're asking for. It's the life Julio has asked you for this

morning. Spare him at least that.

Now the state treats Julio and Lino Flores like pawns on a chest board. You noticed they almost never refer to them by name. It's always the defendant and the victim, the defendant and the victim. They don't see either of them as people, and they are pawns, just like pawns on a chest board.

Julio knows how to move forward and he knows how to attack when he feels threatened or he's angry, or because he's impulsive.

Like a pawn he has had no options but to either move forward and survive or attack when he felt necessary. The pawns are soldiers.

Julio is not a king or a queen or a general, and we don't punish the soldiers. We punish the people in charge: The kings, the queens, the generals.

The state talks about choices, choices, choices. I submit what real meaningful choice has Julio had -- or did he have that day? All of his life Julio saw that his choices were violence. He was shaped by violence and self-preservation. That's what we see on that video, violence and self-preservation.

The state said to you, look everyone in the eye and make the appropriate sentence. I say, yes, that's right.

People don't like to hear this, but I'm going to say it anyway. When we make this decision, we have to look ourselves in the eye.

Now I've defended Julio the best I can, and I'm getting up in the morning and I'm going to be able to look myself in the eye in the mirror, and I hope whatever decision you make you can do the same afterwards because it is a decision that we all have to live with the rest of our lives.

This day forward the decision you make will affect you, will affect me, will affect Julio, will affect Julio's friends and family. It's not an easy decision to make. It's not supposed to be an easy decision to make.

I'm asking you to stand on the side of real civilization, of real morality, of forgiveness and understanding and sympathy, and show that we are better people. We don't have to be like these others and come back with a life verdict. Thank you.

THE COURT: Thank you, Mr. Tallan.

All right. Ladies and gentlemen of the jury, we have a few more matters to attend to.

First, I'm going to ask Polo and David to come forward to be sworn in. Do we have Connie here? They will take their oaths as bailiffs.

(Whereupon, the bailiffs were sworn in by the

Clerk.)

THE COURT: Thank you.

All right. Next, as we have done during the other phases of trial, at this time I need to separate the alternate jurors from the deliberating jurors.

So I'm going to ask jurors three, six, eight, and 14 to stand up at this time, and Polo or David is going -- will take you back to the jury room so you can gather your items.

Then once the deliberating jury leaves the courtroom, then I will be bringing you -- we'll be bringing you back in the courtroom to talk a little bit more.

So if the alternates would please stand. Let me just make sure we have got the right numbers. So we've got number three, six -- six, eight, and 14.

Very well. Okay. If you folks would please follow David, and we'll see you in a few minutes.

All right. Does the state concur that the correct jurors have been identified as alternates?

MR. GODDARD: Yes.

THE COURT: And, Mr. Tallan, do you concur that the correct jurors were identified as alternates?

MR. TALLAN: Yes, Your Honor.

THE COURT: Very well.

Okay. Ladies and gentlemen, we need to finish up

the final jury instructions. You may remember the closing instruction we have not gotten to. So let's do that if everybody's ready.

Okay. Closing Instruction.

This final phase is now submitted to you for decision. Once again, your foreperson will preside over your deliberations and you are in charge of your schedule. You may set and vary it by agreement and approval of the Court. After you have decided on a schedule, please advise the Court in writing.

You are to discuss the case and deliberate only when all jurors are together in the jury room. You are not to discuss the case with each other or anyone else during breaks or recesses.

The admonition I have given you during the trial remains in effect when all of you are not in the jury room deliberating.

After setting your schedule, I suggest that you next review these written jury instructions and verdict form. It may be helpful for you to discuss the instructions and verdict form to make sure you understand them.

Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure and definitions.

Should any of you, or the jury as a whole, have a

question for me during your deliberations or wish to communicate with me on any other matter, please utilize the jury question form that we have provided to you.

Your question or message must be communicated to me in writing and must be signed by you or the foreperson. I will consider your question or note and consult with counsel before answering it in writing. I will answer it as quickly as possible.

During your deliberations -- I think we've worn out the sound system. Can everybody hear me okay? All right.

During your deliberations you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, or computer, the internet, any internet service, or any text or instant messaging service, or any internet chat room, blog, website, or social media to communicate to anyone any information about this case or to conduct any research about this case until you are discharged.

Remember that you are not to tell anyone, including me, how you stand numerically or otherwise until after you have reached a verdict or have been discharged.

All 12 of you must agree on the verdict. You must be unanimous. Once all 12 agree on a verdict, only the

foreperson need sign the verdict form on the line marked foreperson.

Polo, would you put the verdict form up on the ELMO.

You are going to be given one form of verdict, and the verdict form reads as follows and there is no significance in the order to which the options of life and death are listed on the verdict form.

Polo, I think I should have asked one of those attorneys. In fairness to Polo, I've never used an ELMO either.

Thank you, Mr. Wilkison.

It just reads, we, the jury, empaneled and sworn in the above-entitled clause, do upon our oaths unanimously find, having considered all the facts and circumstances of this case, that the defendant should be sentenced to: And then the options are for life and death.

Okay. Ladies and gentlemen, obviously the hour is late. I don't know the status of the water supply here in Florence and whether the bathrooms are continuing to work or not.

So what I would encourage you to do is this, to first settle on some issues of your schedule. You may continue to deliberate this evening for a while if you wish. You don't need to. You can just settle on your schedule

today.

An option is, although we have not been in session for the trial on Mondays, you may deliberate on Monday if you wish.

However, since I have told the jurors that they are not required to be here on Monday, that would need to be a unanimous decision. If any one of you has difficulties being here on Monday, that needs to be respected. But if everybody wants to meet on Monday, you are welcome to do so. We will accommodate you. We will be able to provide for you to be here on Monday.

Alternatively, you could begin your deliberations on Tuesday. Again, the general expectation is that your hours would be similar to the hours that we have traditionally used during the trial. And to that end, please know that you are to take what time you require to reach a verdict.

So with that --

MR. TALLAN: Your Honor, just so we have a clear record, could the Court please read the full verdict form including the paragraphs under life and death.

THE COURT: Certainly. Thank you, Mr. Tallan.

So the -- again, in no particular order, the verdict form -- the first place to checkmark is for life. Then in parentheses is written "in which the defendant shall

be sentenced to life imprisonment without the possibility of release."

Then the next checkmark would be by the word "death," which in parentheses reads, "in which case the defendant shall be sentenced to death."

MR. TALLAN: Thank you, Your Honor.

THE COURT: Mr. Tallan, any other corrections or additions to the instruction?

MR. TALLAN: No, Your Honor. Thank you.

THE COURT: Mr. Goddard, any other corrections or additions to the instructions?

MR. GODDARD: No, Your Honor.

THE COURT: So ladies and gentlemen of the jury, you -- is the jury room open now?

Okay. So if you would please head on back to the jury room. Again, make sure you have some of those juror question forms with you, and I would ask the foreperson to settle on the schedule and communicate that out as soon as you are able to do so.

Polo, here is the verdict form.

As before, a laptop computer will be available for you for purposes of viewing any media, and any exhibits that have been admitted will be brought into -- upon request if they're not already there, and it will take a little time to gather them.

So with that, you are excused.

THE BAILIFF: All rise for the jury.

(The following proceedings took place out of the presence of the jury.)

THE COURT: The Court notes for the record that my judicial assistant Connie Herrera has been sworn in as an alternate bailiff.

(The following proceedings took place in the presence of the alternate jurors.)

THE COURT: Okay. Folks, please have a seat.

Okay. Ladies and gentlemen, the Court does note the presence of the parties, all counsel, and our four alternate jurors, three, six, eight and 14.

First off, just want to acknowledge I know it can be disappointing to have sat through a lengthy trial and not to have been able to deliberate at all.

I have to say this has been a remarkable jury panel. We entered this trial being a little bit concerned in only having four alternates, and all 16 of you have been with us faithfully every day throughout this entire process. We haven't had to cancel any day because somebody wasn't here, anything like that.

So, first, I want to thank you for your attention. I know you have all been actively participating, listening, staying engaged throughout this whole trial even

though you were identified as an alternate during the first phase of the trial.

The rules though continue as before that you remain alternates. There's no way to know how long the jury may deliberate. And if for some reason we were to lose a juror during the time of deliberation, we would call on an alternate to join the deliberating panel.

An alternate would be selected to join the deliberating panel by lot, the same way that you were selected as alternates.

If they were to happen, the jury would begin their deliberations anew with the newly-composed jury with the alternate that has been brought back.

Obviously, we all know that all the jurors have been showing up every day. On the other hand, we're already going long on what our original time estimate was for the trial, and it remains absolutely critically important that we continue to have you all available as alternates for us to get through to the conclusion of this trial. Because, again, it's so far been amazing that we haven't lost a juror. Hopefully that won't happen but you never know.

So what this means is the admonition remains in effect. You continue to not be able to discuss your service as a juror, anything about the case until you are discharged as a juror.

What I would invite you to do is to write your name and phone number on my pad, and if you would like I will call you myself when you are discharged from jury service when this is -- when this trial is at an end and let you know the result of the trial as well.

I know the attorneys and Mr. Salazar and the state are very grateful to you, as I am, for your service as a juror. Please know even though it probably feels like in some way your time has been wasted or something, it really is extraordinary to have not lost a juror during a lengthy trial like this, and there is simply no way that a trial like this can be done without having jurors.

I will tell you the last lengthy trial I had, I had six alternates, which was what I thought was the minimum I would need and I think I lost three during the course of the trial.

So this time we brought it down to a little bit smaller and tighter number thinking that that would do, but we were a little bit concerned about that. Again, it's just been an odd circumstance that we haven't gone through any alternates at all. So very grateful to you.

Please remember the admonition. Please remember all the same restrictions, that you may not do any outside research. Don't expose yourself to any media or any kind of articles or anything like that.

And, again, I would be happy to call you and let you know when you are discharged and give you an update if you wish to do so. Don't need to do so. If you would rather not hear from me, that's fine too. But if you would like, please feel free to leave your phone number.

I would ask you please leave your juror notebooks. Nobody is going to look at them. Polo will secure them. If you have to return to sit with the deliberating jury panel then that notebook will be given back to you. If not, when the jury is discharged, and you are discharged, your notes will be destroyed just like the other notes will be destroyed.

That being said, I'm going to ask you to leave your juror badge or -- have you already got it?

And as I said, the way this will work is that if we lose a juror, the jury department will get ahold of you and we will select the alternate to come back by lot. But other than that, I will give you a call if you wish to give you an update and let you know when you are free to talk about your experience with anyone you wish.

So thank you all very much. Thank you all. You are excused.

(The following proceedings took place out of the presence of the alternate jurors.)

THE COURT: Folks, have a seat.

The foreperson (sic) has informed me that the foreperson has advised him that they wish to break for the night and come back Tuesday morning. So I don't have anything in writing. Just next time make sure they know that any communication must be in writing.

Okay. We have a few other matters to address. But before the jury leaves, is there anything else to address with respect to the jury?

MR. TALLAN: No, Your Honor.

MR. JOHNSON: No, Your Honor.

THE COURT: Okay. So please tell them that they are free to leave and we'll see them back here Tuesday morning.

All right. Let's handle a few more housekeeping matters. Are there any other records to make from today's proceedings, Mr. Tallan?

MR. TALLAN: No, Your Honor.

THE COURT: Mr. Johnson?

MR. JOHNSON: No, Your Honor. Mr. Goddard, he had to step out. Nothing. We're fine.

THE COURT: All right. A few other quick things. On juror questions, I guess my preference would be to handle it as we've handled it on the other phases, just doing it by email where I send out a suggested response and I -- and the communication occurs by email. And if I or any attorney

wants to have an oral argument, whether it be by WebEx or in person, that will certainly be done upon request.

Is that acceptable to defense?

MR. TALLAN: Yes, Your Honor.

THE COURT: Is that acceptable to the state?

MR. JOHNSON: Yes.

THE COURT: We will do it that way then.

Let's speak about the verdicts. My -- obviously, if it's a hung jury, then what we would be dealing with is setting a date and time to come back and -- or setting a trial date if there's not a waiver of time because I believe 90 days is when we would otherwise need to reset for trial.

MR. TALLAN: Sorry, Your Honor. Could you move the microphone a little closer to you.

THE COURT: I'm sorry. I'm sorry about that, Mr. Tallan. Can you hear me okay?

MR. TALLAN: Yes.

THE COURT: Okay. I was saying let's speak about verdicts for a moment. First, if there's not a verdict, if it is a hung jury, I guess it would be my intention, unless there's a waiver of time, we'll need to pick a trial date because I think the trial needs to be reset within -- I think it's 90 days.

However, if there's a verdict, just to be clear, my sense -- and this is a question really, is if the verdict

is life, I believe the proper procedure would be under criminal rules where sentencing is in 15 to 30 days, not in front of the jury, that it's only if it's a death sentence the Court is required to enter immediately in the presence of the jury.

MR. GODDARD: That's correct.

MR. TALLAN: Yes, Your Honor.

THE COURT: And do you concur that for a life verdict it's the 15- to 30-day window unless there's a waiver of time, that that's not in front of jury?

MR. JOHNSON: So it wouldn't be in front of the jury. The defendant does have a right to a presentence report. He could waive that right and be sentenced that day. It would be up to the defendant, but it would not be in front of the jury. The jury would be dismissed.

The Court would either set a sentencing date or the defendant has an opportunity to -- and I guess the next of kin has an opportunity to weigh in as well.

He could be sentenced that day if that was his choice or he could be set out. Statutorily, it has to be done in 30 days.

THE COURT: Right. I think it's the Court's discretion on whether it occur that day or not.

MR. JOHNSON: Correct. Well, yes.

THE COURT: Mr. Tallan, do you concur?

MR. TALLAN: Yes, Your Honor. And now that there's no longer any alternative sentencing in -- with the life sentence, I don't see any reason why we wouldn't move forward with sentencing that day.

THE COURT: Okay.

MR. JOHNSON: I agree.

THE COURT: We'll cross that bridge when we get to it.

MR. TALLAN: And I hope to cross that bridge.

THE COURT: Okay. I want to discuss security issues for a minute, Mr. Salazar.

I want to be very clear that I think your behavior in court has been beyond reproach. I think you have been cooperative and respectful, and I hope you feel that you have been treated with respect as well.

THE DEFENDANT: Yes.

THE COURT: And that being said, if in fact the jury reaches a verdict, that's a different situation to be in. Typically for a verdict in a case of this nature, the Court would defer to the sheriff's office for such security as they deem appropriate under that circumstance.

So just know that no slight is intended to you. This is not at the request of your defense team. This is by what I believe my duty is keeping everyone safe and recognizing that this is an emotional moment that you are

going to be facing when that verdict comes back.

So just know that ultimately I will be deferring to the sheriff's office on what they believe the appropriate thing is, and that might be simple as just having a guard standing closer to you. It might be some further form of restraint.

Now if the word we get back is that it's -- the jury has not been able to reach a verdict, then it will be just as we have been doing. There will be no visible restraints. You must be in civilian attire because the end result of that might be sending the jury back to continue their deliberations. It's only if there is a verdict that it would be going the other direction.

Mr. Tallan, any concerns with any of the advisement that I have -- information that I have provided to your client or to the procedure that the Court is contemplating?

MR. TALLAN: No, Your Honor.

THE COURT: Mr. Johnson?

MR. HENDRICKS: No, Your Honor.

THE COURT: Okay. Is there anything else that the defense would like to raise? Any other issues to address today?

MR. TALLAN: No, Your Honor.

THE COURT: And Mr. Johnson?

MR. JOHNSON: No, Your Honor. Thank you.

THE COURT: Okay. Then with that, obviously Connie can keep you informed. Feel free to contact her and we'll let you know when the jury calls it a day and -- or when there are any updates. Other than that, you will hear from me when there are juror questions.

Anything else?

MR. JOHNSON: No. I guess we need to go through the exhibits.

MR. TALLAN: Right.

THE COURT: Yes. And also the laptop.

MR. TALLAN: Yes.

THE COURT: I'm guessing they're not going to want it today.

Mr. Wilkison, once you have cleared the laptop --

MR. WILKISON: I've cleared it. I went through it. It's all right.

THE COURT: Then why don't you give it to Sheri and she can lock it up with the evidence.

So just to be clear, the state is agreeing for that laptop to be made available to the jury.

And the state concurs?

MR. JOHNSON: Yes, Your Honor.

THE COURT: And then likewise on evidence, are you going to sort that out now?

MR. TALLAN: Yes, we are going to go through the evidence.

THE COURT: Okay. So, Sheri, obviously, very clearly delineate what they have approved or not and what they have approved as being admitted will be what Polo will take to the jury.

Will somebody be here to go through it and look at it one last time on Tuesday?

MR. WILKISON: What, Judge?

THE COURT: The evidence. Just because of this gap of several days just so there's no error.

MR. TALLAN: I can arrange that, Your Honor.

THE COURT: Okay.

MR. JOHNSON: That's fine. So I guess we'll just go through it Tuesday morning.

THE COURT: That makes more sense.

MR. JOHNSON: Be here at 9:00. We'll go through it. Sure.

THE COURT: Just plan on that. So there's no point in doing it tonight.

MR. TALLAN: Can we do 9:30?

THE COURT: 9:30.

THE CLERK: I can do whatever. Just tell me when you are here.

MR. JOHNSON: The jury is starting at 9:00.

MR. TALLAN: Oh, I see. Okay.

THE COURT: But you will probably have some ready to get pretty quickly.

MR. TALLAN: 9:00 is fine.

THE COURT: Okay. We're all set.

Thank you all.

MR. TALLAN: Thank you, Your Honor.

MR. WILKISON: Thank you, Judge.

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REPORTER'S CERTIFICATE

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

I, JUDY E. GRIFFIN, Certified Shorthand Reporter in and for the State of Arizona, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of said proceedings.

I further certify that I have no interest in the event of the action.

WITNESS my hand this 21st day of November, 2023.

_____/S/_____
JUDY E. GRIFFIN
Certified Court Reporter
Reporter No. 50813